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READY REFERENCE DIGEST  
OF  
**ACCIDENT AND HEALTH  
INSURANCE LAW**

BY  
**MYRON W. VAN AUKEN**  
Of the Utica, N. Y., Bar  
General Counsel, The Commercial Travelers' Mutual Accident Association  
of America, Utica, N. Y.

*WITH AN INTRODUCTION*  
BY WILLIAM BROSMITH  
General Counsel and Vice-President of The  
Travelers' Insurance Co., Hartford Conn.

**ACCIDENT DEFINED  
DISEASE DISTINGUISHED  
TABLE OF CASES  
TOPICAL INDEX**



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## FOREWORD

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The basic requirements of any claim against an Accident Insurance Company are (1) an injury, fatal or non-fatal and (2) that the injury was caused by accident or accidental means.

The definitions found in the dictionaries of accident and accidental means indicate a general and fundamental meaning but they do not furnish an accurate and sufficient guide for those who must ascertain their meaning when they appear in a contract of accident insurance.

The Courts, and not the dictionaries, furnish the only controlling and binding guide as to the meaning of these words when used in a contract of accident insurance, and the only authority that can be safely followed.

For such guidance and authority the reported decisions, upon this subject, from every Federal Court in the United States, of the State Courts of every State of the United States, of many local courts, and many of the important decisions of the Courts of Canada and England have been collated and, for the first time, are here brought together and published in a single volume.

A complete table of the cases cited and arranged in alphabetical order, is appended.

The book includes a topical index also arranged in alphabetical order, containing the common-place names applied to injuries, the location of

them, as arm, head, foot, etc., and an amplitude of cross-references, which will instantly point to the page where the case may be found. In every case cited a statement of the facts as well as the decision of it, appears.

This book, with its table of cases and topical index, has been in the making for the last 35 years, during which its compiler has held the position of General Counsel of The Commercial Travelers' Mutual Accident Association of America, of Utica, N. Y. It was begun and has been continued by him for his own professional use and his own convenience.

Its publication is in response to a formal request made to him at a meeting of the General Counsels' Association of Accident and Health Companies held at West Baden, Indiana, in August, 1921, and to the requests of members of the bar throughout the country who have become familiar with it and have recognized its convenience.

The "scratch-book" in which it was started was christened a "Ready Reference Digest."

It is still a real "Ready Reference Digest," readier than ever because of its increased growth and age.

Such merit as may be claimed for it consists in the fact that it includes all the cases, within its scope, and any of them can be found by any person at the very time they are needed.

M. W. VAN AUKEN.

Utica, N. Y., June 6, 1922.

## INTRODUCTION

BY WILLIAM BROSMITH

General Counsel and Vice-President of The  
Travelers' Insurance Co., Hartford, Conn.

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Everyone who is related in any way to the right adjustment of claims for indemnity under policies of accident and health insurance will find the Ready Reference Insurance Digest just what it purports to be —a helpful and dependable compilation of what the courts have declared to be the rights and obligations of the parties to such insurance contracts. What has been held to be the law with regard to any particular casualty or cause of disability or the interrelation of cause and effect will be found to be stated with a terseness and directness that will appeal to the mind of the layman and should be useful in the way of suggestion, in these respects, to the mind of the lawyer.

Perhaps in no way will this compilation serve a better purpose than by the prevention of controversies and litigations as to the merits of claims for losses. Insurance companies as well as policyholders and beneficiaries are vitally interested in the speedy and right adjustment of indemnity claims and should therefore welcome this Digest as an office assistant in this direction.

The story told in the cases cited is one of serious and expensive mistakes for which the policyholders and beneficiaries at times and the insurance companies at other times were to blame. In the early days of accident and health insurance—and a very large percentage of these cases date back to these early days—it was natural that the companies on the one hand and the claimants on the other should differ as to the application of a policy to a given state of facts or as to the relation between a so-called accident and subsequent disability or death. But time and the courts, although obviously, as the pages of this work will indicate, the courts were not always in agreement and therefore could not have been right in all cases, have developed certain rules which tend to lessen the number of such differences and as a consequence the amount of litigation. It is a fact not sufficiently known or appreciated that, although the growth and development of accident and sickness insurance in this country during the last half century have been phenomenal, the ratio of disputed or controverted claims has been materially reduced.

WILLIAM BROSMITH.

Hartford, Connecticut,  
July 24, 1922.

## ARRANGEMENT

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	Page
Foreword .....	iii
Introduction by William Brosmith, General Coun- sel of the Travelers' Insurance Co. of Hartford, Conn. ....	v
Ready Reference Insurance Digest; Accident Defined, Disease Distinguished .....	1-250
Table of Cases .....	251-273
Topical Index .....	274-357

(vii)



# READY REFERENCE INSURANCE

## DIGEST

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**Exertion, restraining runaway horse—Fright or strain  
—Death.**

While one insured against accident was driving along a public street, his horse became frightened at an unsightly object and ran away, without upsetting the carriage or coming in contact with anything; but the insured was apparently greatly endangered at the time, and suffered so severely, either from fright, or strain caused by his physical exertion in restraining the horse, that he died within an hour afterward. *Held*, that death ensued from bodily injuries effected through external, violent and accidental means.

*McGlinchy et al. v. Fidelity and Casualty Company* (Me. S. J. C.),  
80 Me. 251; 14 Atl. Rep. 13; 6 Am. St. Rep. 190.

**Fall—Slipped on inclined platform at freight house—  
Leg injured—Septic or pyemic symptoms developed  
Infection.**

Insured on April 30, 1906, while walking up an incline leading to the platform of a freight house,

slipped and fell, seriously injuring his leg below the knee, and the disability continued to August 17th following. A physician who attended insured testified that he was called and dressed the wound, and in about a week or ten days, possibly less, insured developed septic or pyemic symptoms, which are about the same, and very decided symptoms and swelling of the leg, and that continued for some little time, and the wound was a long time healing, as such wounds usually are. That the injury to the bone caused the infectious condition, which occurred in about ten days, and which was the natural and expected result of the accident. *Held*, that the company is liable; the fact that infection resulted did not bring the same within the terms of the limitation; the words "injury or disability" being referable to the time of the accident.

*Garvey v. Phoenix Preferred Accident Insurance Company (N. Y. S. C.),*  
123 App. Div. 106; 108 N. Y. Supp. 186.

#### **Sunstroke—Accident.**

An accident policy insuring against bodily injury from accidental means, provided that sunstroke, suffered through accidental means, should be deemed bodily injuries. Insured, after being exposed to the sun's rays in the necessary conduct of his business, suffered a "sunstroke," which is defined as an inflammatory disease of the brain, brought on by exposure to the too intense heat of the sun's rays, or to over-heated air. *Held*, that,

as insured, while intending to be in the sun, did not intend to produce a sunstroke, the sunstroke was an "accident," which is an event that takes place without one's foresight or expectation, and hence was within the policy, being produced by "accidental means," which are agencies that produce effects that are not their natural and probable consequences; the requirement that the sunstroke be produced by accidental means not requiring an accident to precede the sunstroke.

*Gallagher v. Fidelity and Casualty Company of New York* (N. Y. S. C.),  
163 App. Div. 556; 148 N. Y. Supp.  
1016; 44 Ins. L. Jour. 448.  
Affirmed: 221 N. Y. 664; 117 N. E.  
Rep. 1067.

**Leg injured in striking against truck—Abrasion—Infection—Blood poisoning—Septicaemia—Death.**

Where the accident occurred by the insured striking her leg against a truck in the department store where she worked, causing an abrasion of the skin, which became infected by the germ called staphylococcus, from which developed acute general septicaemia, or blood poisoning, which was the cause of her death eight days after the accident, it was *held* that the clause in the policy limiting insurer's previously expressed liability, where the injury or loss "resulted from or was contributed to by any poison, disease, infection," etc., such limitation applies to a disease or infection which

the deceased was suffering prior to or at the time of the accident.

*Finucane v. Standard Accident Insurance Company* (N. Y. S. C.)  
184 App. Div. 280; 171 N. Y. Supp. 1018; 52 Ins. L. Jour. 603.

**Fall in plunge bath.**

Deceased, who was subject to epileptic fits, was found dead in a plunge bath in an almost standing position, the water having a temperature of about 100 degrees. There was an abrasion between his eyes, and a bruise on one side of his head. His physician testified that the entrance into the bath of one in his condition would be likely to result in an epileptic attack, and that the fall or blow which caused the abrasion or bruise, was not sufficient to have caused death. *Held*, upon the evidence that the deceased came to his death through other causes "than external, violent and accidental means," within the intent and meaning of the policy in suit.

*Tennant v. Travelers' Insurance Company* (U. S. C. C.),  
31 Fed. Rep. 322.

**Hernia—Groin injured in running against door knob.**

Where the policy indemnified against death resulting from "external, violent and accidental means," but stipulated that the insurer was not to be liable when death resulted "wholly or par-

tially, directly or indirectly, from hernia," and the insured, in running against a door knob so injured his groin that hernia resulted, and he afterwards died, the insurer is nevertheless liable.

*Miner v. Travelers' Insurance Company*  
(Ohio C. P.),  
3 Ohio S. & C. P. Dec. 289; 2 Ohio N.  
P. 103.

**Fall against dashboard of buggy—Abdomen injured—Appendicitis—Septic peritonitis—Surgical operation—Prior attacks of appendicitis.**

Where assured was driving in a buggy when the front wheel ran off and caused him to be thrown against the dashboard, striking his abdomen; and soon thereafter he was seized with pain in his bowels, especially on the right side, and later suffered severe cramping pains in the abdomen, nausea, high fever and rapid pulse, which trouble the doctors diagnosed on the third day as "acute appendicitis," and two days thereafter an operation was performed which disclosed that the trouble was "acute appendicitis, septic peritonitis and locked bowels," and on the seventh day after the injury assured died, his doctors stating that his death was caused by these diseases and that they were the direct results of the accidental injury.

However, about ten or twelve years before assured suffered two different attacks of appendicitis, and three prominent surgeons testified as

experts that the injury could not have caused the third attack of appendicitis, but that the immediate cause of death was septic peritonitis, the result of chronic, recurrent appendicitis.

The question of cause of death was submitted to the jury, and it rendered a verdict for plaintiff. In the opinion, the Circuit Court of Appeals gave the following rule:

"If the insured recovered from his former attacks of this disease, so that it no longer existed in his body, and there was only a susceptibility to have it in case a proper exciting cause should arise, and in this case the fall against the dashboard proved to be such exciting cause, the case would be one for recovery under the policy; but if because of former attacks there was not merely a susceptibility to a further attack, but the actual disease itself existed, liable to be rendered active and virulent by an injury such as that suffered by the insured, in that event the active disease which resulted in death would not be regarded as the result of the fall and the latent diseases, and hence there could be no recovery under the policy."

Judgment affirmed against company.

*New Amsterdam Casualty Company v.  
Shields* (U. S. C. C. A., 6th Cir.,  
Tenn.),

155 Fed. Rep. 54; 85 C. C. A. 122; 36  
Ins. L. Jour. 1046.

**Bicycle riding—Inflammation of appendix—Septic peritonitis.**

Under a policy providing that, if the insured's death resulted solely from bodily injuries effected through external, violent, and accidental means, a certain sum shall be paid; that, if such death result from such means, while riding a bicycle, double that sum shall be paid; but that if death result from other causes, the insurer shall not be liable on the death of the insured from septic peritonitis resulting from an inflammation of the appendix, caused by the regular movement of the psoas muscle while the insured was riding his bicycle.

*Appel v. Aetna Life Insurance Company* (N. Y. S. C.),  
86 App. Div. 83; 83 N. Y. Supp. 238.  
Affirmed: 86 N. Y. Supp. 1128; 180 N. Y. 514; 72 N. E. 1139.

**Pneumonia—Traumatic form—No accident.**

In an action on an accident insurance policy which insured against "bodily injuries effected though external, violent and accidental means," it appeared that assured died of pneumonia, with symptoms of the traumatic form. Assured was a miner, and was taken sick while at work; but there was no evidence of any accident at the mine and assured made no complaint of any injury at the time. *Held*, that evidence of a statement relating to an injury, made by assured to his physician thirty-six hours after the physician was

first called, was not admissible as part of the res gestae, where such statement did not purport to have been made in connection with the professional treatment.

*Equitable Mutual Accident Association v.  
McCluskey (Colo. S. C.),  
1 Colo. App. 473, 29 Pac. Rep. 383; 21  
Ins. Law Jour. 540.*

**Fall—Peritonitis—prior attacks of peritonitis of liver.**

Where assured died of peritonitis localized in the region of the liver, and induced by a fall, and having previously had peritonitis in the same part, and the disease having produced effects which rendered him liable to its recurrence, and the policy insuring against death from external, violent and accidental means, but conditioned not to extend to any case in which death or disability occurs in consequence of disease . . . nor to any case except where the injury is the proximate cause of the disability or death, the presiding justice stated in his instructions to the jury, the following rule :

The question as to whether peritonitis, if that caused his death, is to be deemed a disease within the meaning of this policy, and the proximate cause of death . . . so as to prevent recovery, depends upon the question whether or not before the time of the fall, and at the time of the fall, he had then the disease—was then suffering with the disease. If he was then—although aggravated and made fatal by the fall, he can not recover.

But, if owing to existing lesions caused by that disease, but not having the disease at the time, the same kind of malady—that is, peritonitis—was started up, the company was to be answerable, although, if there had been a normal state of things the fall would not have occasioned such a result.

It was held that this ruling gave an interpretation to the language of the policy which was in accordance with the apparent purpose and intention of the parties, and which made the contract a beneficent provision for the beneficiaries named in it.

*Freeman v. Mercantile Mutual Accident Association* (Mass. S. J. C.),  
156 Mass. 351; 30 N. E. 1013; 17 L. R. A. 752; 21 Ins. L. Jour. 663; 46 Albany L. Jour. 77.

**Jumped from platform—Internal organs injured—Stricture of duodenum—Duodenitis.**

It appeared that deceased jumped voluntarily from a platform four or five feet from the ground, alighting heavily; that shortly afterwards he vomited; from that time on retained nothing on his stomach; passed nothing but decomposed blood and mucus, and died nine days afterwards from a stricture of the duodenum, duodenitis, produced by the accident, the complaint alleging.

*Held*, that it was proper to charge that the jump was the means by which the injury, if any was sustained, was caused, and that the question

was whether there was anything accidental in the act of jumping from the time deceased left the platform to the time he alighted on the ground. Where two of his companions jumped from the same platform just before deceased, and alighted safely, it will be presumed that deceased intended to and thought that he would alight safely, and a verdict that it was an accident that he did not so alight was warranted.

In the general charge the Court laid before the jury the issue as to the constriction or occlusion of the duodenum, and charged that the jury must weigh the conflicting claims in regard thereto, and that if deceased received an injury which directly produced duodenitis and thereby caused death, the injury was the proximate cause of death.

*United States Mutual Accident Company  
v. Barry* (U. S. C. C.)  
131 U. S. 100; 9 Sup. Ct. 755; 33 L. Ed.  
60; 40 Albany Law Jour. 35.  
Affirming 21 Fed. 712.

**Fall down flight of stairs—Rupture of large aneurism on aorta—Faintness cause of fall.**

While going down a flight of stairs insured fell. At the time he was with his daughter. As soon as assistance arrived the daughter stated that her father had fainted. The father himself had stated, as testified by a witness, that: "When he was going down the stairway everything before him got blank and he felt a faintness coming over

him and he must have fallen." There were no obstructions on the stairway which could have tripped him. There were no bruises on his body. The immediate cause of death, which occurred eleven days after the fall, was the rupture of a large aneurism on the ascending part of the aorta. There was expert evidence to the effect that an aneurism of the size found was a condition of long standing and of slow growth.

*Held*, that the verdict in favor of the plaintiff was against the weight of the evidence. The liability of the defendant does not extend to a death which results from, or in consequence of, any disease, nor to any death, unless caused by bodily injury which is external, accidental, and is the proximate, sole and only cause of death. Plaintiff was bound to show that her decedent's death came strictly within the terms of the contract.

*Sasse v. Order of United Commercial Travelers of America* (N. Y. S. C.),  
168 App. Div. 746; 154 N. Y. Supp.  
558; 172 App. Div. 952; 157 N. Y.  
Supp. 1144; 179 App. Div. 927; 166  
N. Y. Supp. 1113; 180 App. Div. 887;  
166 N. Y. Supp. 1113.

*Affirmed*, 226 N. Y. 669.

See, also, *Sasse v. Travelers' Insurance Company* (N. Y. App. Div.),  
154 N. Y. Supp. 569; 169 App. Div. 187.

**Fever—Hernia—Blow on head from falling plaster.**

A clause in a policy excepting from the operation thereof an injury resulting from disease does not fall within the exception where a policy holder had a long and serious illness, such as a fever, and while recovering therefrom received a blow on the head from falling plaster, from which death resulted ultimately, though not immediately, the proximate cause of death would be, not the fever, but the blow from the plaster, although death might not have resulted but for the debilitated condition of the injured person, resulting from the fever. In such a case the immediate cause of the death was the blow on the head, though the consequences might be the result of the disease from which he suffered. In order to prevent a recovery under such a clause in the policy, it must be shown that the disease was the substantial cause of the injury; and the mere fact that the disease may aggravate the consequences of the injury and make them more serious than would have been otherwise, does not bring the case within the exception stated in the policy.

Where an accident insurance company seeks to avoid liability under a clause in its policy providing that it shall not be liable for any injuries or death resulting wholly or in part from hernia, and the insured at the time of the injury had an existing hernia in his system, it is incumbent for the company, after it has shown that an injury resulted from an accident, to show that the hernia was the contributing cause which brought about

the injury resulting from the accident, and it is sufficient to show that the existence of the hernia rendered the consequences more serious.

*Thornton v. Travelers' Insurance Company* (Ga. S. C.)

116 Ga. 121; 42 S. E. 287; 94 Am. St. Rep. 99; 32 Ins. Law Jour. 38.

See following:

This case was tried in accordance with the former ruling, reported in 116 Ga. 121, 42 S. E. 287, 94 Am. St. Rep. 99. The evidence was conflicting, but sufficient to sustain a verdict for the plaintiff for eight weeks' disability. None of the assignments of error present grounds requiring the second grant of a new trial. Judgment for plaintiff below; here affirmed against company.

*Travelers' Insurance Company v. Thornton* (Ga. S. C.),

119 Ga. 455; 46 S. E. 678; 33 Ins. Law Jour. 443.

**Falling of scalding water in ear—Disease and low vitality.**

The complaint alleged that the injury which resulted in the death of the insured was caused by the accidental falling of scalding water into his ear.

In an action on a policy the Court say: "We think the only reasonable interpretation to be placed upon this clause (insurer should be liable

for the death of the insured if it resulted solely from accidental injuries) is to say that the injury must stand out as the predominant factor in the production of the result, and not that it must have been so virulent in character as necessarily and inevitably to have produced that result regardless of all other conditions and circumstances. People differ so widely in health, vitality and ability to resist disease and injury, that what may mean death to one man would be comparatively harmless to another, and therefore the fact that a given injury may not generally be lethal does not prevent it from becoming so under certain circumstances or conditions; and if under the peculiar temperament or condition of health an individual upon whom it is inflicted, such injury appears as the active, efficient cause that sets in motion agencies that result in death, without the intervention of any other independent force, then it should be regarded as the sole and proximate cause of death. The fact that physical infirmities of the victim may be a necessary condition to the result does not deprive the injury of its distinction as the sole producing cause. In such case disease or low vitality do not arise to the dignity of concurring causes, but, in having deprived nature of her normal power of resistance to attack, appear rather as the passive allies of the agencies set in motion by the injury.

*Driskell v. United States Health and Accident Insurance Company,*  
117 Mo. App. 363; 93 S. W. 880.

**Fall—Ruptured kidney—Cancerous kidney.**

Death from a rupture of a kidney produced by an accidental fall, is the result of an accident, "independent of all other causes," within the provisions of the policy—this meaning direct or proximate causes—though a cancerous condition of the kidney made the rupture possible.

*Fetter v. Fidelity and Casualty Company,*  
174 Mo. 256; 73 S. W. 592; 97 Am. St.  
Rep. 560; 61 L. R. A. 459.

**Fall on sidewalk—Shock caused cerebral hemorrhage—  
Tumor of brain.**

Death of the insured resulted from his stumbling over an obstruction on the sidewalk, whereby he was thrown violently to the ground, the shock of the fall causing cerebral hemorrhage. There was evidence the insured was afflicted with a tumor of the brain, which, at its stage of growth, would not probably have been an independent cause of death for many years, but which created such conditions that when an accidental fall ruptured the inner lining of an artery cerebral hemorrhage ensued, causing death. It was held the jury was justified in finding that the fall was the proximate cause of death, even though it would not have produced death but for the diseased condition of one of the arteries of the brain.

*Continental Insurance Company v. Lloyd,*  
165 Ind. 52; 73 N. E. 824; 34 Ins. Law  
Jour. 461.

**Strain—Diseased condition.**

A strain received in the ordinary course of the insured's business is an accident within the meaning of an accident insurance policy insuring against accidental bodily injuries caused solely by external, violent, and accidental means, and recovery on the policy for the death of the insured is not precluded because of the diseased condition of the body existing when the accident occurred, when the accidental injury was the inciting, efficient and predominant cause of his death.

*Patterson v. Ocean Accident and Guarantee Company* (D. C.),  
25 D. C. App. 46.

**Struck by automobile, across stomach, thrown to pavement, head injured, concussion of brain—Appendicitis—Heart disease.**

"Since it appears from all the evidence of plaintiff's witnesses that the death of the insured was due to a concurrence of three causes, to wit, the injury, the appendicitis and the heart disease; and that no one of these causes without the other two, and no two without the remaining one, would have produced the death," the company not liable under clause in policy which provided that the company would not be liable for any loss caused or contributed to by illness or disease.

*Clarke v. New Amsterdam Casualty Company*,  
26 Calif. App. Decisions, 1225 (Civil No. 2382, 1st App. Dist. June 15, 1918).

See following:

Under such a policy, if disease plays a part in the death of the insured person after an accident, it is essential to a recovery that such disease was due to the accident; if death was caused in part by heart disease, and such disease was not in fact caused by the accident, there could be no recovery. If an accidental injury produces morbid changes in the exercise of the vital functions, which in turn results in death, the injury and not the morbid change is held to be the cause of death.

There was testimony to the effect that the insured was struck across the stomach by the fender of an automobile and was thrown so that his head struck the pavement; there was a concussion of the brain which caused unconsciousness for several hours, and for several days thereafter he was so disturbed mentally that he was unable to understand his surroundings or his condition; he had previously been in extraordinarily good health and bodily vigor; about a month after the accident he complained of a pain in his side and an operation was performed upon him and the appendix removed; he died a few days later. Immediately after the accident his heart was examined but no indication of heart trouble was apparent; but just before the operation a slight heart murmur was noticed; an autopsy revealed no abnormal condition of the lungs or liver indicative of any chronic heart condition; there was medical testimony to the effect that the condition of the heart "was due to the appendicinal abscess, aided by the lowered resistance caused by the con-

cussion of the brain." Another physician testified that the appendix would not have been infected from the bacilli in the large intestine had it not been for the accident. *Held*, that this evidence was sufficient to sustain the finding that the accident was the proximate cause of death.

*Clarke v. New Amsterdam Casualty Company* (Cal. S. C.),  
179 Pac. Rep. 195; 53 Ins. Law Jour.  
605.

**Foot injured in railroad yards—Recovered—Became ill on day he resumed work, and died next day.**

A locomotive fireman injured his foot while at work in the railroad yards. He was treated therefor and presumably so far recovered as to resume work about two weeks thereafter, but became ill the same day and died the following day. The question in issue was whether death resulted solely from bodily injuries effected through external, violent and accidental means.

To determine the cause of death of a person insured against sudden death by accident, all morbid changes of the vital functions or the texture of bodily organs which result from such injury should be regarded as the effect thereof and not the cause, and when death results from such morbid changes, it is caused by such accident within the meaning of the policy.

Where a person, after recovery from an accidental injury, succumbs to a disease which would not have been fatal but for the lowered vitality

following such injury, the disease, and not the lowered vitality, is the cause of death.

*Ward v. Aetna Life Insurance Company*

(Neb. S. C.),

82 Neb. 499; 118 N. W. 70; 38 Ins. Law Jour. 14.

See following:

The policy insured against death resulting from bodily injuries effected through external, violent and accidental means, which, independent of all other causes, produced death. The Court instructed the jury that there could be a recovery under the policy if the accident was the proximate cause of death, even though "there were other causes that accelerated, or even being added, resulted in death." *Held*, that the instruction was erroneous.

And where the jury, after considering the question for some time, requested the Court to instruct them further as to whether they could return a verdict for the plaintiff if they found that the death was the result of "the sum of two causes", and the Court refused to give them any further instructions, *Held*, that the refusal of the Court to answer the request of the jury in the negative was reversible error.

*Held*, that the defendant was not liable if the sum of two causes for only one of which defendant is liable caused the death. Here sickness and injury combined.

*Ward v. Aetna Life Insurance Company* (Neb. S. C.),

85 Neb. 471; 123 N. W. 456; 39 Ins. Law Jour. 277.

See following:

In an action on a policy of accident insurance, the conjectural opinion of an expert, based solely on a hypothetical question, not submitting all the material facts, is insufficient to sustain a verdict. (Judgment for plaintiff in trial court. Here reversed in favor of company.)

*Ward v. Aetna Life Insurance Company*  
(Neb. S. C.),  
135 N. W. 220.

**Fall on icy sidewalk—Appendicitis—Peritonitis.**

There was testimony that insured fell on an icy sidewalk with his arm doubled up under him across the right side of the abdomen. He suffered much pain during that day, ate little and retired early. The pain increased during the next day, when a physician was called. The physicians agreed that death was due to peritonitis or inflammation of the appendix. One of the physicians testified that the cause of the appendicitis was due to the fall on the sidewalk.

If appendicitis was produced by a fall upon the sidewalk, there could be a recovery under the policy insuring against death resulting solely through accidental means. (Judgment affirmed against insurer.)

*Aetna Life Insurance Company v.  
Wicker* (U. S. C. C. A., 2nd Cir.,  
New York),  
240 Fed. 398; 153 C. C. A. 324; 49 Ins.  
Law Jour. 811.

**Arm broken—Pain in chest and lungs—Embolism or thrombus—Pneumonia.**

The policy provided that it should not apply to any case "except where the injury is the proximate and sole cause of the disability or death." It appeared that the insured had his arm broken on March 24. The fracture was reduced. A few days later he was taken suddenly with severe pains in his chest and lungs, from which he was relieved, and was convalescent for a week or ten days, when he was again attacked in a manner similar to the first, and from that time he grew gradually worse, until April 12, 1887, when he died. The evidence introduced by the plaintiff tended to show the cause of his death was embolism or thrombus, which was the direct result of his arm being broken, while the evidence of the defendant tended to show that his death was caused by pneumonia, and that the breaking of the arm was not the cause of his death. *Held*, that a finding that his death was caused solely and proximately by his breaking his arm was warranted by the evidence.

*Peck v. Equitable Accident Association  
of Binghamton (N. Y. S. C.),  
5 N. Y. Supp. 215; 52 Hun, 255.*

**Fall from cart—Kidney disease accelerated by accident.**

A person insured his life for 1,000 pounds with an accident insurance company. The policy provided that, to recover under it, an accident must

be the direct cause of the death, and that within three months, and provided that the company would not be liable for death arising from natural disease, although accelerated by accident. The insured was thrown from a cart and died within three months. After proof, from which it appeared that the insured had for years suffered from kidney disease, that he was free from active symptoms of that disease when he met with the accident, *Held*, that death was caused by kidney disease accelerated by the accident, and, therefore, the company is not liable.

*Anderson et al. v. Scottish Accident Insurance Company,*  
27 Scottish Law Rep. 20.

**Fall from veranda—Leg injured—Erysipelas.**

Where a person was accidentally injured in the leg by falling from a veranda, and the wound caused thereby, which at first seemed slight, was within four or five days aggravated by erysipelas, from which death ensued twenty-three days after the accident, the external injury was the "proximate or sole cause" of the death, within the meaning of those words in an accident policy.

*Young v. Accident Insurance Company,*  
Montreal Law Rep., 6 Super. Ct. 3.  
*Accident Insurance Company of North America v. Young* (Can. S. C.),  
12 Canadian Law Times, 217; 20 Can. S. C. 280; 28 Can. L. J. (N. S.), 246.

Putrid animal matter containing poisonous "bacillus anthrax"—Lips infected—Malignant pustule—Carbuncle.

The plaintiff's testimony tended to show that death was caused by a malignant pustule upon the lip; that such pustule is not strictly a disease, but a pathological condition of the system, caused by the accidental infliction of diseased or putrid animal matter infested with bacilli anthrax upon the thin skin of the lip of insured, whence the bacilli multiplied, and were diffused through the system. The defences were, death by poison, death from infectious disease, and death by facial carbuncle, an enlarged boil or a large cluster of small boils. *Held*, on appeal, where the evidence tends to confirm either of the two theories as to the cause of death of the assured, on only one of which the plaintiff is entitled to recover, a judgment on a verdict for the plaintiff will not be disturbed.

*Bacon v. United States Mutual Accident Association* (N. Y. S. C.),  
3 N. Y. Supp. 237; 50 Hun 605.  
Affirming: 44 Hun, 599.

Reversed, as follows:

*Held*, that death resulting from a malignant pustule, caused by the infliction upon the body of putrid animal matter containing poisonous "bacillus anthrax" is death from disease, and not from accidental cause, within the terms of the policy insuring against "bodily injuries, effected through external, violent and accidental means",

and not extending "to any death or disability which may have been caused wholly or in part by bodily infirmities, or disease existing prior or subsequent to the date" of the policy, "nor to any case except where the injury is the proximate or sole cause of the disability or death."

*Bacon v. United States Mutual Accident Association* (N. Y. Ct. of App.),  
123 N. Y. 304; 25 N. E. Rep. 399; 9 L. R. A. 617; 20 Ins. Law Jour. 3; 42 Albany Law Jour. 493; 33 N. Y. St. Rep. 591; 20 Am. St. Rep. 748.

**Accident—Hernia—Surgical operation—Peritonitis.**

An accident insurance policy, insuring against death "from bodily injuries effected through external, violent and accidental means", but excepting death from hernia, does not relieve the insurer from liability where a person, injured in an accident, resulting in a hernia, dies after a dangerous and unsuccessful surgical operation resulting in peritonitis, performed when death seemed inevitable without it, the accident is the proximate cause of his death.

*Travelers' Insurance Company v. Murray* (Colo. S. C.),  
16 Colo. 296; 26 Pac. Rep. 774; 25 Am. St. Rep. 267.

**Sunstroke or heat prostration—Disease.**

"Sunstroke or heat prostration", contracted by decedent in the ordinary course of his duty as a

supervising architect, is a disease, and does not come within the terms of a policy of insurance against bodily injuries sustained through external, violent and accidental means, but expressly excepting "any disease or bodily infirmity."

The Court will take judicial notice of the fact that sunstroke is a "serious disease" within the meaning of the policy.

*Dozier v. Fidelity and Casualty Company*  
(U. S. C. C.),

46 Fed. Rep. 446; 13 L. R. A. 114; 20  
Ins. Law Jour. 794; 33 Central Law.  
Jour. 161; 44 Albany Law Jour. 110.

### Sunstroke.

Sunstroke is a disease.

*Sinclair v. The Maritime Pas. Ass. Co.*,  
9 W. R. 342; 2 Bigelow's Life & Acc.  
Cas. 596; 30 L. J. Q. B. 77; 7 Jur.  
(N. S.), 367; 3 E. & E. 478; 4 L.  
T. 15.

### Exposure to sun, etc.—Sunstroke.

The policy provided that "if sunstroke, due to external, violent and accidental means," shall result in loss, the company would pay the principal sum promised therein. Assured's death was caused by sunstroke, resulting from exposure to the sun and humid atmosphere on a hot day. *Held*, that such death was not within the risks insured by the policy.

*Bryant et al. v. Continental Casualty  
Company* (Texas C. C. A),  
145 S. W. Rep. 636; 41 Ins. Law Jour.  
1086.

Reversed as follows:

The policy insured against bodily injury "which is effected directly and independently of all other causes from external, violent and purely accidental means." Under the title "special accident indemnities" the policy contained the following provision: "If sunstroke, freezing or hydrophobia due in either case to external, violent and accidental means, shall result," etc. *Held*, that under the terms of the contract sunstroke should be considered as an accident rather than as a disease. To hold that sunstroke is a disease under the contract would contradict the express terms of the sunstroke provision.

Insured died from a sunstroke suffered while walking upon the streets in the ordinary course of his business as collector. *Held*, that the word "means" is employed in the sense of "cause." The sunstroke having occurred without any human agency and in a sudden, unexpected and unusual way it has all the elements of an accident both in its occurrence and result, just as clearly so as would a stroke of lightning.

An unforeseen result following not naturally from an act, but in an unusual and unexpected way is from accidental means.

*Bryant et al. v. Continental Casualty Company* (Texas S. C.),  
107 Tex. 582; 182 S. W. Rep. 673;  
L. R. A., 1916-E, 945; Ann. Cas.  
1918-a, 517.

**Sunstroke.**

Under an accident policy *Held* that no recovery can be had for a death by sunstroke, unless the sunstroke was brought about by some concurring accident.

*Semancik v. Continental Casualty Co.*  
(Pa. Super. Ct.),  
56 Pa. Super. Ct. 392; 45 Ins. Law  
Jour. 215.

The death of a person by sunstroke, caused by his exposure to the sun on a hot day while pursuing his usual occupation as a laborer on a railroad track, in his ordinary way, is not caused by sunstroke due to "external, violent and accidental means," within an accident policy insuring against death by "sunstroke" due to "external, violent and accidental means."

*Semancik v. Continental Casualty Co.*  
(Northampton C. P.),  
43 Penna. Co. Ct. Rep. 498.

**Exposure to sun and heat of engine—Sunstroke.**

A policy, insuring against death from bodily injuries caused from external, violent and accidental means, provided: "If sunstroke, freezing or hydrophobia due in either case to external, violent and accidental means shall result independently of all other causes in the death of the assured within ninety days from the date of exposure or infection the company will pay said principal sum." Insured was a railroad fireman. He suffered a sunstroke following exposure to the

sun and to the heat of his engine while in pursuance of his duties. *Held*, that there was nothing in the evidence to show that death was caused under such circumstances as to render the company liable.

*Continental Casualty Company v. Pittman* (Ga. S. C.),  
145 Ga. 641; 89 S. E. Rep. 716; 48 Ins. Law Jour. 573.

### Sunstroke.

Disability of a traffic policeman due to sunstroke while he was performing his duties in the usual way, was a "bodily injury sustained solely through accidental means."

*Higgins v. Midland Casualty Company* (Ill. S. C.),  
281 Ill. 431; 118 N. E. Rep. 11; 51 Ins. Law Jour. 289.

### Sunstroke—Pneumonia.

The policy provided: "If sunstroke caused by the direct effect of the sun's rays \* \* \* accidentally suffered by the insured shall result directly and independently and exclusively of all other causes in the death of the insured within ninety days from the date of exposure or infection, the company will pay beneficiary hereinbefore named the principal sum of this policy." *Held*, that where insured suffered a sunstroke while pursuing his regular occupation in the usual way, the insurer was liable, and it was not neces-

sary that the sunstroke be preceded by or caused by an accident.

Sunstroke, suffered by insured in pursuance of his regular occupation, is an accident, being an unexpected and unusual occurrence.

Where insured died several days after an alleged sunstroke from pneumonia, and there was no evidence to show any connection between the alleged sunstroke and the pneumonia, it was proper to direct a verdict for the insurer.

*Pack v. Prudential Casualty Company*  
(Ky. C. A.),

170 Ky. 47; 185 S. W. Rep. 496; L. R.  
A. 1916-E, 952; 48 Ins. Law Jour.  
115.

### **Sunstroke.**

In an accident insurance policy, which provides, "If sunstroke, freezing, or hydrophobia, due in either case to external, violent or accidental means, shall result, independently of all other causes, in the death of the insured within ninety days from the date of the exposure or infection, the company will pay said principal sum as indemnity for loss of life. Held, that "accidental means" is used to denote "accidental cause," and in case of sunstroke, if the same was suffered while the insured was engaged in his usual avocation or going about his affairs in an ordinary manner as any other person might have been under like or similar circumstances, and did not intentionally and voluntarily subject himself to an intense heat calculated to produce sunstroke, with

the knowledge that it would probably occur, then the sunstroke was suffered from "accidental means" or "accidental cause," within the meaning of the policy.

*Continental Casualty Company v. Clark*  
(Okla. S. C.),  
173 Pac. Rep. 453; 52 Ins. Law Jour.  
405.

### Sunstroke.

Insured, while on his way to work, immediately after stepping from the street car on which he was riding, suffered a sunstroke. *Held*, that the resulting disability was not accidental within the meaning of the policy.

The policy provided that "anyone of the following, namely,—sunstroke, freezing, hydrophobia—suffered through accidental means" should be deemed a bodily injury.

*Elsey v. Fidelity & Casualty Company*  
(Ind. App.),  
109 N. E. Rep. 413; 46 Ins. Law Jour.  
359.

Reversed, as follows:

The policy insured "against bodily injuries sustained through accidental means." It provided "sunstroke \* \* \* suffered through accidental means shall be deemed an injury." The insured while riding in a street car was subjected to the direct and indirect rays of the sun. When

he was about to alight he suffered sunstroke. *Held*, that the injury so suffered was caused by "accidental means." If in the act which precedes the injury, though an intentional act, something unusual, unforeseen and unexpected occurs which produces the injury, it is accidental.

*Elsey v. Fidelity & Casualty Company*  
(Ind. S. C.),  
120 N. E. Rep. 42; 52 Ins. Law Jour.  
394.

**Heat stroke from furnace—Sunstroke—Disease.**

In an action on an insurance policy, providing for loss of time due to sunstroke should be deemed to be due to external, violent and purely accidental means entitling insured to full benefits according to the terms of the policy, where plaintiff's claim is based on a loss which he alleges was due to sunstroke, he is not precluded from recovery by the fact that his disability was occasioned by exposure to the heat of a furnace.

*Continental Casualty Company v. Johnson*  
(Kans. S. C.),  
74 Kans. 129; 85 Pac. Rep. 545; 6 L. R.  
A. (N. S.) 609; 118 Am. St. Rep. 308;  
35 Ins. Law Jour. 68.

**Sunstroke—Heat stroke.**

Where in an action on an accident policy, it appeared that at assured's request the word "sunstroke" was stricken from a provision that

the policy should not cover casualties resulting from certain causes, the Court could not hold, as a matter of law, that sunstroke is a disease, and not such a casualty as was covered by the policy.

Sunstroke and heat stroke are synonymous terms and mean a sudden prostration resulting from exposure to excessive heat, regardless of the source from which the heat emanates.

*Mather et al. v. London Guarantee & Accident Company, Ltd.,*

125 Minn. 186; 145 N. W. Rep. 963; 43  
Ins. Law Jour. 656.

### **Sunstroke.**

An accident policy provided that it should extend only to injury or death from "external, violent and accidental means," and not to injuries or death caused or contributed to by disease. The policy also expressly provided that the company should be liable for only one-fourth of the amount of the policy where the disability or death was caused or contributed to by sunstroke while not in the line of duty as railroad employe. The insured died from sunstroke received in the line of his duty as railroad employe. *Held*, that the company was liable for the full amount of the policy.

*Railway Officials and Employes' Accident Ass'n v. Johnson,*

109 Ky. 261; 22 Ky. L. R. 759; 58 S. W. Rep. 694; 30 Ins. Law Jour. 259; 52 L. R. A. 401; 95 Am. St. Rep. 270.

**Fall—Side bruise—Fever—Typhoid fever.**

It was shown in evidence that the deceased had a fall, of whose effects he complained several days and then fell sick. From this sickness he never recovered, and throughout its continuance he complained of the hurt, and bore the bruise. His attending physicians testified that he died of typhoid fever, and that this disease was never produced by a bruise; his nurse, a competent one, of long experience, testified that he did not have typhoid fever, and it was admitted that bruises might produce other forms of fever. *Held*, that the evidence preponderates so decidedly that the insured did die of typhoid fever not brought on by the accident, the Court should have set aside a verdict in favor of plaintiff.

*Standard Life and Accident Insurance Company v. Thomas* (Ky. Super. Ct.),  
12 Ky. Law Rep. 715.

Reversed, as follows:

*Held*, that the jury had the right to believe that the physicians' theory was a mistake, and that the wound that the deceased received produced his death, and was the result of an accident.

*Standard Life and Accident Insurance Company v. Thomas* (Ky. C. A.),  
13 Ky. Law Rep. 593; 17 S. W. Rep.  
275.

**Thumb injured—Finger injured later—Virus from first injury in second—Blood poisoning.**

Policy insured against death effected through external, violent and accidental means, but provided that the insurance should not extend to any \* \* \* death which may have been caused wholly or in part by bodily infirmities or disease existing prior or subsequent to the date of the certificate, nor to any case except where the injury is the sole and proximate cause of death. On April 8, 1889, the insured received an injury to his thumb, and on the 27th day of April received another injury to one of his fingers. The first wound had been lanced about ten days after the injury and continued to discharge matter to the time of the second injury, and that virus from the first wound may have communicated to the second injury, causing blood poisoning. *Held*, that if the inoculation occurred at the time the wound was made, and was a part of the accident, such accident was the sole and proximate cause of the death, though blood poisoning ensued.

*Martin v. Equitable Accident Association*  
(N. Y. S. C.),

16 N. Y. Supp. 279; 41 N. Y. St. Rep.  
77; 61 Hun 467.

*Martin v. Manufacturers' Accident Indemnity Company*, (N. Y. C. A.),

151 N. Y. 94; 45 N. E. Rep. 377.  
Affirming, 24 N. Y. Supp. 1147; 71 Hun,  
614.

Fall into stream—Drowned—Heart defective, causing dizziness—Fainting caused by indigestion—Temporary illness—Excepted causes.

The insured with companions, was fishing, having established a camp upon the banks of a trout stream. The insured was found dead in the middle of the stream, lying face downward, in about six inches of water. There was a large bruise upon his forehead. He was seen near where he was found, some twenty minutes before, playing a trout. The bank was about eighteen inches above the water, and there were in the water stones, egg-size and smaller, upon which he might have struck his head. There was some little froth, of a yellowish color, about his mouth, and his face was purple. His tongue was somewhat inflamed. An autopsy was held on the evening of the day following his death. The blood in the corpse at the autopsy was rather fluid and not coagulated. The brain, the heart, and other vital organs were found in a normal and healthy condition. Evidence was introduced by the defendant tending to show that deceased had suffered from defective action of the heart in its aortic valve. The autopsy failed to reveal any such structural defect, but all the tests were not applied. There was also some evidence tending to show that deceased suffered from dizziness caused by defective action of the heart. *Held*, that a verdict for plaintiff would not be disturbed.

A drowning caused by a temporary trouble to which the assured was not subject, but which was

entirely unusual and uncommon, whereby he fell into the water, is "accidental" within the meaning of an accident insurance policy.

Under a provision of the policy that the insurance shall not extend "to any case except when the accidental injury shall be the proximate and sole cause of the disability or death," if the insured suffer death by drowning, the drowning is the proximate and sole cause of death, no matter what the cause of falling into the water, unless death would have been the result without the presence of the water.

Under a provision of such a policy that the risk shall not extend to "accidental injuries or death resulting from or caused, directly or indirectly," by fits, vertigo, or other diseases, an accidental death by drowning results from and is caused indirectly by fits, vertigo, or disease if the fall into the water, from which drowning ensues, is caused by such disease.

A provision in such a policy that the risk shall not extend to death caused by bodily infirmity or disease does not exempt the company from liability in case of fainting produced by indigestion or a lack of proper food, or any other cause which would show a mere temporary disturbance or enfeeblement.

*Manufacturers Acc. Indemnity Company  
v. Dorgan* (U. S. C. C. A.),  
58 Fed. Rep. 945; 7 C. C. A. 581; 16  
U. S. App. 290; 22 L. R. A. 620.

**Fall—Contusion of cerebellum—Apoplexy—Degeneration of cerebrum, etc.**

In an action on an accident insurance policy, the jury were warranted in finding that a fall was the sole cause of death of insured, where there was testimony that deceased was usually in good health till the time of the fall, and had shown no signs of degeneracy of the brain. Dr. P., who attended deceased daily after his fall, and Dr. R., testified that the post-mortem showed contusion of the cerebellum, which culminated in an effusion of blood on the brain, producing apoplexy and death, and that in their opinion the contusion was produced by the fall. Dr. H., who also assisted at the post-mortem, testified to the existence of degeneration of the cerebrum and to a diseased condition of certain arteries, which in his opinion were of long standing, caused death independently of the fall; and Dr. O., who was called for defendant, agreed with Dr. H., as to the cause of death, if the latter's diagnosis was correct.

A special verdict, containing an affirmative answer to the question: "Was such injury the sole cause of death?" is equivalent to a finding that the injury was the sole and proximate cause of the apoplexy which was the immediate cause of death.

*Hall v. American Masonic Accident Association* (Wis. S. C.),  
86 Wis. 518; 57 N. W. Rep. 336.

**Fall—Head injured—Death—Fatty degeneration of the brain and heart.**

Where the assured, while pursuing his business as a traveling salesman, sustained a heavy fall, striking and injuring his forehead, and the evidence disclosed no cause for the fall, but the assured while standing threw up his hands and fell to the floor, and an autopsy revealed an advanced stage of fatty degeneration of the brain and heart, it was *Held*, that the cause of death was not an accident insured against, and that there could be no recovery under a policy whereby insurance was expressly withheld for any "bodily injury happening directly or indirectly in consequence of any disease," etc.

*Sharpe v. Commercial Travelers' Mutual Accident Association of America*  
(Ind. S. C.),

139 Ind. 92; 37 N. E. Rep. 353; 23 Ins.  
Law Jour. 757; 27 Ch. L. N. 14.

**Fall—Fits or vertigo—Bodily infirmity and disease.**

In an action on an accident policy, evidence that insured, who was free from disease so far as his family or physician could discover, directly before the fall which caused his death was seen to stagger, does not conclusively prove that the fall was caused by "fits or vertigo," so as to avoid the policy under a condition avoiding the same in such event, physicians testifying that insured's conduct might have been due to other causes.

The words "disease" and "bodily infirmity," as used in a provision in an accident policy ex-

empting insurer from liability for injuries caused thereby, mean practically the same thing, and only include an ailment or disorder of a somewhat established or settled character, and not merely a temporary disorder, arising from some sudden and unexpected derangement of the system, though it produces unconsciousness.

Injuries caused by a fall due to a temporary and unexpected physical disorder are "violent," "external," and "accidental," within the meaning of such words in an accident insurance policy.

*Meyer v. Fidelity and Casualty Company*  
(Iowa S. C.),

96 Iowa, 378; 65 N. W. Rep. 328; 59  
Am. St. Rep. 374; 25 Ins. Law Jour.  
346.

#### Fright and excitement—Nervous shock.

The plaintiff was a signal man in the employ of the defendant, a railway company, who entered into a contract of insurance with him, by which they agreed to pay a weekly amount in case of his being incapacitated from employment by reason of accident sustained in the discharge of his duties in the company's employ, such insurance to be absolute for all accidents, however caused, occurring to the insured in the fair and ordinary discharge of his duty. Plaintiff, in the discharge of his duty, endeavored to prevent an accident to a train, by signaling to the engineer, and the excitement and fright arising from the danger to the train produced a nervous shock which incapacitated him from employment for more than

fifty-two weeks. *Held*, that the plaintiff had been incapacitated by accident within the meaning of the policy.

*Pugh v. London, B. & S. C. Ry.* (Eng. C. A.),

2 Queen's Bench, "The Law Reports," 248.

**Exertion running up hill—Head pains—Apoplexy—  
Bodily infirmity, etc.**

An accident policy was issued by the company to the assured, insuring him against death resulting through external, violent and accidental means, but not covering bodily infirmities or voluntary overexertion. Insured was a man fifty-three years of age, and while engaged in work which required stooping, and shortly after running rapidly up a hillside to get an article needed in his work, was attacked with pains in his head, and shortly after died. On the trial of an action on the policy, two physicians, called by the plaintiff, testified that insured died of apoplexy, which is a bodily infirmity or disease, and that there was nothing in the circumstances to have caused death if there had been no bodily infirmity or predisposition to apoplexy. *Held*, that it was error to refuse to direct a verdict for the insurance company.

*Travelers' Insurance Company v. Selden*  
(U. S. C. C. A., 4th Cir., Va.),

78 Fed. Rep 285; 24 C. C. A. 92; 42  
U. S. App. 253; 44 Central Law Jour.  
300; 26 Ins. Law Jour. 704.

**Fall—Struck water spout—Head and face injured—  
Heart disease.**

In an action to recover on an accident policy, the evidence showed that insured suddenly fell, striking on a water spout, which left external marks on his face and head, and that he died a few minutes thereafter. It appeared that deceased was troubled with disease of the heart. Certain physicians testified that the phenomena attending deceased's death were characteristic rather of an injury to the brain, than heart disease; and one expert testified that the injuries to the head and brain described by the evidence would have been sufficient to cause death even in the case of a healthy heart.

Under the policy of accident insurance which provides that it shall not extend to nor cover accidental injuries or death "resulting from or caused, directly or indirectly, wholly or in part, by disease in any form," there can be no recovery for the death of the insured if he had a disease but for which death would not have resulted from the accident; and where the insured had a diseased heart, it was error to give an instruction allowing the jury to find for the plaintiffs if they believed the accident was sufficient to cause the death of a man with a diseased heart, although insufficient to kill one with a normally healthy heart. (Judgment here reversed in favor of company.)

*Commercial Travelers' Mutual Accident  
Association of America v. Fulton  
(U. S. C. C. A., New York),*

79 Fed. Rep. 423; 24 C. C. A. 654; 45 U. S. App. 578; 26 Ins. Law Jour. 565.

Judgment affirmed against company:  
93 Fed. Rep. 621; 35 C. C. A. 493.

**Sting of insect—Blood poisoning.**

Death caused by the sting of an insect is effected through "external, violent and accidental" means, within the meaning of an accident policy, and the proximate cause of death, resulting from blood poisoning caused by the sting, is the sting of an insect.

*Omberg v. United States Mutual Accident Association* (Ky. C. A.),  
101 Ky. 303; 40 S. W. Rep. 909; 27 Ins.  
Law Jour. 68; 19 Ky. Law Rep. 462;  
72 Am. St. Rep. 413.

**Reached to close shutter—Ruptured artery—Hemorrhage—Consumption—No accident.**

Insured, who was suffering from consumption, was with his two brothers in their office. Preparatory to leaving the office insured went to a window to close the shutters. A chair stood in front of the window, and he stood on his toes and reached over the chair toward the shutters, and, as he did so, blood began to flow from his mouth. He was placed on a lounge and died within a few minutes. The cause of his death was hemorrhage from a ruptured artery. There was no evidence

that he fell, slipped, lost his balance, failed to catch the shutter when he reached for it, or that it moved at his touch more or less readily than he had expected it would, or that anything was done or occurred which he had not foreseen and planned, excepting the rupture of the artery and the consequences which resulted from it. *Held*, that his death did not result from an accidental cause.

*Feder et al. v. Iowa State Traveling Men's Association* (Iowa S. C.),  
107 Iowa, 538; 78 N. W. Rep. 252; 70  
Am. St. Rep. 212; 43 L. R. A. 693;  
28 Ins. Law Jour. 276; 48 Central  
Law Jour. 248.

**Stumbled—Fall—Side injured on rail—Lungs weak.**

The deceased was sent to take mail from the freight house to the passenger depot. In going, he ran to avoid a severe storm, and, when he had run a considerable distance along the tracks, he was seen to stumble, throw up his hands, fall, and strike his side against one of the rails, and then roll over on the ground. His dead body was found almost immediately after he fell, lying across the rails, blood oozing freely from his mouth and nose. Although the deceased had been suffering from weak lungs for some time before his death, yet he was strong and sound enough to discharge satisfactorily the duties of flagman and freight handler for the railroad for more than two years immediately preceding his death. *Held*, that it was for the jury to decide whether the

death of deceased was caused solely from the fall, so as to be accidental within the meaning of the accident policy. Company liable.

*Railway Officials & Employes' Accident Association v. Coady* (Ill. A. C.),  
80 Ill. App. 563.

**Drowning accidental—Epilepsy.**

Evidence that deceased, a man fifty-three years old, left his office in New York about 2 o'clock in the afternoon, in good spirits; that he said he was going to Staten Island to make some calls, and invited a friend to go with him; and that his body was found eight days afterwards floating in the water of New York bay, with no marks of violence upon it, and with a frothy mucus in the mouth, such as is found where a person has been in the water and struggling, getting water into his lungs, and of a character which excluded the idea of epilepsy, is sufficient to sustain a verdict of death resulting proximately and solely from accidental causes.

*Landon v. Preferred Accident Insurance Company* (N. Y. S. C., App. Div.),  
60 N. Y. Supp. 188; 43 App. Div. 487.  
Affirmed: 167 N. Y. 577; 60 N. E. Rep. 1114.

**Fall on polished floor—Head hits fender—Bruise at base of neck—Concussion of brain—Dizziness—Bright's disease.**

To prove that the death of the insured was caused by a fall not induced by any disease or

bodily infirmity, the insurance company claiming the fall was caused by vertigo (which the policy did not cover), it was shown that he came home and told a servant he had a dizzy headache, and would lie down; that later he was found dead on the floor, his head resting on the bar of the fender, and his body straight out; and that the floor was polished hard wood, and a rug pushed away from his feet. There was some evidence that he was in general good health, and that he had never fallen from dizziness, and no actual proof that this fall was caused by dizziness. The family physician for twelve years had never attended him for vertigo or chronic disease of any kind. He saw blood about the nose of deceased, and he and three other physicians performed an autopsy. He found deceased healthy throughout, and could not state the cause of death. The second physician found a bruise above the large vertebrae at the base of the neck, with hemorrhage, and, in his opinion, death was caused by a fall and concussion of the brain and shock. A third physician corroborated this opinion. The son of the deceased, also a physician, saw a depression in the muscles at the back of the neck, and a bruise under the collar button, which was dented on both sides and bent together. He saw blood on the fender. The fourth physician thought deceased died from natural causes, and not from accident, and he said he found indication of Bright's disease sufficient to have caused death. Deceased's son testified that he had made the usual tests several times, and found deceased did not have Bright's disease.

*Held*, that a verdict that death resulted from "external, violent and accidental means," was justified.

*Larkin v. Interstate Casualty Company*  
(N. Y. S. C. App. Div.),  
60 N. Y. Supp. 205; 43 App. Div. 365.

**Sudden faintness—Fall—Temporary disorder—Fits or vertigo.**

Injuries caused by a force due to a temporary and unexpected physical disorder, are violent, external and accidental, within the meaning of such words in an accident insurance policy.

Evidence of a sudden faintness, immediately preceding a fall and injury, does not conclusively prove that the fall was caused by fits or vertigo so as to avoid the policy, under a policy avoiding the same for these causes, where physicians testified that insured's condition might have been due to other causes.

*Interstate Casualty Company v. Bird*  
(Hamilton Co., Ohio C. C.),  
18 Ohio Cir. Rep. 488; 10 O. C. D. 211.

**Fall on slippery pavement—Heart ruptured by fall and disease.**

Under an accident policy which expressly stipulates against liability for death from accident unless the accident is the proximate and sole cause, there can be no recovery where the death of the insured resulted from a rupture of the heart

caused in part by its diseased condition, and in part from a fall on a slippery pavement, neither cause in itself being sufficient to cause death.

*Hubbard v. Mutual Accident Association,*  
(U. S. C. C., E. D. Pa.),  
98 Fed. Rep. 930.

See following case:

The policy insured against death only when resulting from bodily injuries received through "external, violent and accidental means, independently of all other causes," and provided that the insurance did not cover death "resulting wholly or partly, directly or indirectly, from any of the following causes: \* \* \* disease or bodily infirmity, hernia, fits, vertigo, sleepwalking." Held, that the phrase, "all other causes" and "disease or bodily infirmity" were not limited by the subsequent enumeration of specific disease or infirmities and that the policy did not cover death resulting from a rupture of the heart caused in part by its diseased condition, and in part by a fall on a slippery pavement.

*Hubbard v. Traveler's Insurance Company* (U. S. C. C., E. D. Pa.),  
98 Fed. Rep. 932.

**Fall in car—Back hurt—Strain—Typhoid fever previously.**

In an action on an accident insurance policy, it appeared that the insured had been sick, with symptoms of typhoid fever; that, contrary to the advice of his physician, he took a railroad trip,

and that, while at the water cooler, the car gave a sudden lurch, causing him to fall, and "hurt his back." The following day he suffered from internal troubles, which could only be accounted for by the presumption of a severe strain, his abdominal temperature became very high, he vomited blood, and on the second day died. Two physicians testified that there were no symptoms of typhoid fever subsequent to the accident, and that death was caused wholly by the injuries. Held, that the evidence was sufficient to support a finding that death was caused through external and violent means, independent of insured's diseased condition.

A condition in the policy preventing recovery for death from disease, voluntary over-exertion or voluntary exposure to unnecessary danger did not defeat the right of recovery for death occurring while insured was ill, and unnecessarily taking a trip by rail, contrary to the advice of his physician, but which was caused by an accident entirely independent of insured's weak condition, and which might have occurred to a man in good health.

*Aetna Life Insurance Company v. Hicks,  
et al. (Texas C. C. A.),  
23 Tex. C. C. App. 74; 56 S. W. Rep. 87.*

**fall—Shock—Weakened heart causing deficient circulation.**

While in an action upon an accident policy the testimony of medical experts as to the cause of

death as derived from the result of the autopsy is entitled to great respect, a mere hypothesis that the death, which occurred a month subsequently to a given accident, was indirectly caused thereby through shock, is sufficient to carry the case to the jury, where it does not appear that the deceased ever complained of shock or of the injury for some time prior to death, and other medical testimony is contradictory. (Judgment here reversed in favor of company.)

*Thurber v. Commercial Travelers' Mutual Accident Association of America*  
(N. Y. S. C., App. Div.),  
52 N. Y. Supp. 1071; 32 App. Div. 636.

Reversed, see following:

In an action on an accident policy, the uncontradicted testimony of five medical experts showed that the insured, while in apparently perfect health, sustained an injury by a violent fall sufficient to cause death by deficient circulation through weakening of the heart, occasioned by the shock and the local injury. After a month's treatment, during which period his physician found him twice in an apparently dying condition, he started, in an unhealed condition, on a considerable journey and, without any other known cause or illness, died four days later. The post-mortem examination revealed no cause of death except such as was directly traceable to the injury, the evidence of which was distinctly visible. *Held*, that the testimony was sufficient to submit to a

jury the question whether death of the insured was the result of the injury. (Judgment here reversed against company.)

*Thurber v. Commercial Travelers' Mutual Accident Association of America*  
(N. Y. S. C., App. Div.),  
64 N. Y. Supp. 174; 51 App. Div. 608.

**Blow on head—Abrasion—Heart disease.**

In an action upon a policy of accident insurance by which the defendant promised that it would pay the plaintiff the sum of \$2,000 in the event of the death of her husband resulting from "bodily injuries sustained through external, violent and accidental means," it appeared that the insured and his son, seventeen years of age, were in a boat towed by a launch, which turned shortly, causing the boat to capsize. The boy was in the center of the boat, and decedent in the stern. The boat made a complete turn and, when it came right about, decedent lay in the bottom, unconscious, and died soon after being taken ashore. The coroner's inquest resulted in a verdict of death from disease of the heart. Medical testimony was conflicting as to the condition of the heart, and whether its condition was the cause of death. The son testified that, as the boat turned over, his father reached to save him, and was then struck a blow on the head. Two abrasions of the skin on the head were found. Experts testified that death could be caused by a blow of that char-

acter. *Held*, that the evidence supported a verdict of accidental death.

*Stout v. Pacific Mutual Life Insurance Company* (Cal. S. C.),  
130 Cal. 471; 62 Pac. Rep. 732.

**Thrown down by team—Apoplexy caused by blow—Wheel passed over neck—Apoplexy caused fall.**

An accident policy did not insure against death occasioned wholly or partly, directly or indirectly, by disease or bodily infirmity. The insured was found dead near his team, a wheel having passed over his neck. The autopsy showed that death resulted from apoplexy. Defendant claimed that the apoplexy preceded and caused the fall, while plaintiff claimed he was cast or thrown down by his team, the blow producing apoplexy. *Held*, that the court should have granted defendant's request to charge that the plaintiff could not recover, even if death was caused by accident, if disease or bodily infirmity contributed thereto. (Judgment here reversed in favor of company.)

*Clark v. Employers' Liability Assurance Company* (Vt. S. C.),  
72 Vt. 458; 48 Atl. Rep. 639; 30 Ins. Law Jour. 514.

**Chloroform administered for surgical operation—Appendicitis—Blood poisoning—Septic poisoning.**

In an action on an accident policy for death from an anaesthetic, it appeared that the insured died during an operation for appendicitis. A

witness for plaintiff testified that chloroform was the immediate and determining cause; that insured was suffering from blood poison, which was a contributory cause, and would be a dangerous present agent, and liable to produce death under the operation. A witness for defendant testified that at the time of the operation the insured was suffering from the absorption of septic material into the circulation; that his extremities were cold, his respiration difficult, his pulse 140 to 150; that witness stated at the time that insured would probably die under the operation, and would surely die without it. *Held*, that the evidence showed that death did not result from chloroform alone, and plaintiff could not recover.

*Maryland Casualty Company v. Glass*  
(Texas C. C. A.),  
29 Tex. C. C. A. 159; 67 S. W. Rep.  
1062.

**Sickness—Voluntary exertion—Ruptured blood vessel.**

Where one recovering from a sickness was lying down asleep, partly dressed, and being suddenly awakened, with the direction to dress quickly, arose, appearing somewhat dazed and confused, and hurriedly attempted to remove his nightshirt over his head, and, while his arms were raised, became entangled therein, and putting forth exertions broke a blood vessel, his movements can not be held to have been involuntary, as was necessary to sustain the verdict for plain-

tiff in an action for an accident benefit in the event of death from accidental causes.

*Smouse v. Iowa State Traveling Men's Association* (Iowa S. C.),  
118 Iowa, 436; 92 N. W. Rep. 53; 32  
Ins. Law Jour. 173.

**Rheumatism caused by accidental injury.**

Recovery can be had on an accident policy for death where the accidental injury causes rheumatism, and this produces death.

*Travelers' Insurance Company v. Hunter*  
(Texas C. C. A.),  
30 Tex. C. C. A. 489; 70 S. W. Rep. 798.

**Leg injured by thumb nail—Leg inflamed—Erysipelas  
—Septicaemia.**

A person insured himself with the defendants under a policy whereby the defendants agreed to pay him a certain sum in case he should be injured by accidental violence and should die within three months of its occurrence, if the injury should be the "direct and sole cause" of his death. The policy was subject to the condition that it should not apply to "death \* \* \* caused by or arising wholly or in part from 'any' intervening cause." The assured, on July 2, accidentally inflicted a wound on his leg with his thumb nail. The leg became inflamed, and on July 9 erysipelas had set in. This was followed on July 12 by septicaemia, and on July 16 by septic pneumonia, of which complaint he died on July 22. It was conceded by the defendants that the septic

germs, the development of which resulted in the man's death, were introduced into his body at the time of the infliction of the wound. *Held*, that the erysipelas, septicaemia and septic pneumonia were not "intervening causes" within the meaning of the policy, but merely different stages in the development of the septic condition which was immediately brought about by the introduction of the poison, and that the man's death was directly and solely caused by the accidental injury to his leg.

*Mardorf v. Accident Insurance Company*  
(Eng. K. B.),  
1 King's Bench (Law Rep. May 1,  
1903), 584.

**Delirium—Fall from window.**

Where one holding an accident policy falls from a window in delirium, the delirium is the proximate cause of the injury.

Under an accident policy providing that the insurance does not cover injuries received in consequence of being or having been under the influence of, or affected by, or resulting directly or indirectly, in whole or in part, from disease or bodily infirmity, recovery can not be had for a fall from a window while delirious, whether the delirium be regarded as the proximate or remote cause of injury.

*Carr v. Pacific Mutual Life Insurance Company of California* (Kansas City C. A.),  
100 Mo. App. 602; 75 S. W. Rep. 180.

**Scuffling—Finger cut with steel eraser—Finger inflamed—Erysipelas—Blood poisoning.**

The policy provided that the death of the insured must result "solely from accidental injuries." The undisputed facts are that, in a friendly scuffle, insured received a slight cut on his little finger from the point of a steel eraser which stuck out of the other person's pocket; that inflammation of the finger followed this cut, which developed into erysipelas and blood poisoning, causing insured's death. The question argued is whether death was solely due to the cut on the finger or whether it was due to erysipelas, and the consequent blood poisoning, as an independent cause. *Held*, that the disease was not concurrent with the injuries, but was a natural consequence of it, and the death resulting therefrom was, therefore, solely due to the injuries, and not due to any independent cause.

*Delaney v. Modern Accident Club* (Iowa S. C.),

121 Iowa, 528; 97 N. W. Rep. 91; 63 L. R. A. 603.

**Temporary sickness—Fall from train.**

Insured, while riding as a passenger on a railway train, became sick, with desire to vomit, and, to relieve himself, attempted to get into the closet inside the car, and, it being locked, went out on the platform, from which he fell or was thrown by a lurch of the car and was killed. The train at the time was running from fifty to sixty miles an

hour. The policy provided that it should not cover death "resulting wholly or partly, directly or indirectly, from disease in any form, either as a cause or effect." Held, that the term "disease" as here used, was not intended to cover and does not apply to a temporary derangement of the functions of some organ, such as insured experienced.

*Preferred Accident Insurance Company v. Muir* (U. S. C. C. A., 3rd Cir., Pennsylvania),  
126 Fed. Rep. 926; 61 C. C. A. 456; 33  
Ins. L. Jour. 639.

**Fall from bicycle—Right femur fractured—Heart spasms—Angina pectoris.**

The proof shows that Crosby fell from a bicycle on Irving Place, Buffalo, on June 20, 1902, fracturing his right femur and, it is claimed, sustaining other injuries, which culminated in his death on August 10th, following. At the time of the accident he was 51 years of age, of robust health, vigorous in his mode of life, temperate in his habit and careful of his diet. Immediately after the accident his face was pallid, and he became emaciated, and complained constantly of intense pain in his back, between the shoulder blades, and in his chest. These anginal pains increased in intensity, and the spasms were intermittent and prostrating to the time of his death. From the evening of the injury he was unable to lie down, but was compelled to sit up by reason of the severity of the

heart spasms. The fractured femur recovered, and this injury did not necessitate his sitting up. The physicians in response to a hypothetical question fairly containing the facts proven, attributed the death to angina pectoris, caused by the accident in falling from his bicycle. *Held*, that the jury were justified from the evidence in finding that the death of insured was due to the injury received in the fall from the bicycle.

*Root v. London Guarantee and Accident Company, Ltd.* (N. Y. S. C., App. Div.),

86 N. Y. Supp. 1055; 92 App. Div. 578;  
Affirmed: 180 N. Y. 527; 72 N. E. Rep. 1150.

**Fall on stone steps—Arm broken, face cut and bruised  
—Hemorrhages.**

The policy provided that the widow should receive \$5,000 upon the death of the insured, provided death was the result of injuries received and "caused solely and exclusively by external, violent and accidental means, and not directly or indirectly \* \* \* from disease in any form, either as cause or effect." The evidence showed that insured fell while going up four stone steps to his office; that he was found lying at the bottom of the steps, with his left arm broken and his face cut and bruised; that the keys to the office were discovered on the doorstep; that insured, in answer to the question put him, said that he did not know how he came to

fall, and that after walking, with the assistance of another person, a distance of about three hundred and seventy-five feet to his house, he fainted, and within two hours was taken with hemorrhages, from which, after a lapse of four days, he died. It was shown by the evidence of attending physicians that insured suffered no other disorder that could have caused his fall or death. *Held*, that the verdict for the plaintiff is sustained by the evidence, and that the fall was accidental.

*Taylor v. General Accident Assurance Corporation, Ltd.* (Pa. S. C.),  
208 Pa. 439; 57 Atl. Rep. 830; 33 Ins.  
Law Jour. 627.

**Side, colon and intestine injured—Endocarditis—Septicaemia—Gangrene.**

A post-mortem examination disclosed the fact that insured was afflicted with endocarditis at the time of his death. The physicians who made the post-mortem examination found the diseased condition of the heart to which we have already referred, and also discovered spots upon the right foot, which were caused by the complete plugging of the femoral artery near the knee by clotted blood and vegetation from the diseased heart, carried to the point in the artery by the blood flowing therefrom. The insured's side was injured by the accident, and the autopsy disclosed that the colon, or large intestine, immediately beneath the place of the injury, was affected with gangrene, which was undoubtedly the immediate

cause of insured's death, and that an obstruction had lodged in one of the small branches of an artery which furnished blood for the portion of the colon which was found diseased. It was the contention of the company in the court below, as well as here, that the endocarditis ante-dated the injury, and that the obstacle found in the artery carrying blood to the colon was caused by the diseased condition of the heart, and was the cause of the gangrenous condition of the colon. The plaintiff's theory was, and is, that the endocarditis was either caused by septicaemia, produced by the injury, or, if not so caused, that it was not a factor in causing the death of the insured. There was evidence supporting both theories. *Held*, that the question as to whether the death of insured was caused by the accident independently of the disease, or by the disease, was properly left to the determination of the jury. (Judgment affirmed against company.)

*Morrow v. National Masonic Accident Association* (Iowa S. C.),  
125 Iowa 633; 101 N. W. Rep. 468; 34  
Ins. Law Jour. 227.

**Fall—Blow—Artery ruptured—Apoplexy—Paralysis.**

The by-laws of the company provided that there should be no liability "for any death or disability happening directly or indirectly, wholly or in part, accidentally or otherwise, because of, or resulting in, or from any disease or bodily or mental infirmity." The testimony showed a diseased

condition of the arteries at the time of insured's death, and physicians of skill and reputation testified that the condition probably existed at, and prior to, the time of the alleged accident; that this condition greatly weakened the arteries; and that because thereof a blow or some other exciting cause might produce apoplexy or paralysis when in a healthy condition these results would not follow.

The Court below instructed the jury that if the insured sustained a fall, and if the bursting of the artery was caused thereby, the plaintiff would be entitled to recover, even though it was found that the artery was in a weakened condition by reason of disease. *Held*, that this instruction was erroneous; that as long as parties who are capable of so doing shall be permitted to make their own contracts, it is the plain duty of the Court to enforce them as they are written, unless fraud or public policy shall intervene; and if it be true, as the jury might have found under the evidence, that the diseased condition of the arteries aggravated the effect of the accident, if there was one, and contributed to the disability occasioned thereby, then, under the express terms of the contract, there was no liability on the part of the association.

*Binder v. National Masonic Accident Association,*

127 Iowa, 25; 102 N. W. Rep. 190.

**Heart weak—Strain of heart by physical exertion—  
Dilation of heart.**

A policy of insurance provided for the payment in case assured should "sustain any bodily injury caused by violent, accidental, external and visible means," and the injury so sustained should be "the sole and immediate cause of death of the insured," within three months of the occurrence of the accident. The assured died on January 25, 1904, while the policy was in force, the following circumstances having led up to his death: On the morning of December 26, 1903, he was in the apparent enjoyment of good health and able to discharge the duties of his employment, which were duties requiring some bodily activity. In fact, however, on that day and for some considerable time prior thereto his heart was in a weak and unhealthy condition, although he did not know that fact. During the morning of December 26, being apparently in his usual good health, he attempted to eject a drunken man from his master's premises, using some physical exertion for that purpose by pushing or pulling in order to overcome the man's passive resistance. The effect of this physical exertion was to cause a strain on the assured's heart, and the increased work of the heart under this strain rendered it, owing to its weakened and unhealthy state, incapable of recovering its ordinary condition when the immediate strain ceased, the consequence being that the heart began to dilate, and the dilation so set up was the cause of death. But for this exer-

tion in attempting to eject the drunken man the assured might have lived a considerable time longer. *Held*, that the injury which resulted in the death of the assured was not caused by "accidental means" within the meaning of the policy, and the insurers were, therefore, not liable.

*Scarr v. General Accident Assurance Corporation, Ltd.* (England C. A.),  
1 King's Bench, 387; 1 Ann. Cas. 787  
and note.

**Accidental injury—Diabetes—Co-operating causes.**

An accident insurance policy provided that the company should be liable for injuries or death caused solely by accidental means, and expressly exempted the company from liability if death resulted wholly or in part, directly or indirectly, from any bodily disease or infirmity of the insured. The evidence in this case shows that at the time the policy was issued, and at the time of the insured's death, which was claimed to have been the proximate result of an accidental injury, he was affected with diabetes, and the evidence is conclusive that such disease directly co-operated with the injury in causing death. *Held*, that the company was not liable.

*White v. Standard Life and Accident Insurance Company* (Minn. S. C.),  
95 Minn. 77; 103 N. W. Rep. 735; 5  
. Ann. Cas. 83 and note.

**Judgment modified on re-hearing:**

95 Minn. 77; 103 N. W. Rep. 884.

**Accidental injury—Typhoid fever developed later.**

The insured received an injury June 12, and as a result thereof was confined to his bed from the date of the injury until about July 1. From July 1 to 18 insured was up and about, making no complaint on account of the injury. July 18 and 19 he went to the office of a physician complaining of a headache and other symptoms; and was advised by the physician that he was threatened with typhoid fever and to go home and go to bed, which he did. Insured died of the fever August 16. The Court instructed the jury that if by reason of the injuries received by insured some disease was caused to be set up in his body which would not have happened or existed but for said injuries, and, from which disease so caused, the insured died, "that in such case the said injuries established the proximate cause of the death." *Held*, that, conceding the evidence tended to prove that insured, by reason of said injuries, might have contracted the disease more readily than he would otherwise have done, the instruction ignored the plain provision of the policy sued on—that it covers only injuries which "solely and independently of all other causes" necessarily end in death, and erroneously assumed that the injuries alone caused the disease.

*Continental Casualty Company v. Peltier*  
(Va. S. C. A.),  
104 Va. 222; 51 S. E. Rep. 219; 34 Ins.  
Law Jour. 760.

**Insured struck another in mouth—Cut hand with teeth—Blood poisoning—Arm amputated—Death.**

The policy insured against "disability or death resulting directly and independently of all other causes, from bodily injuries sustained through external, violent and accidental means." The insured becoming engaged in an altercation with another person, struck such person in the mouth, cutting his hand by coming in contact with the teeth of such person. In a few days blood poisoning set in; the arm was amputated; and death of the insured followed. *Held*, that the death of insured was due to external, violent and accidental means within the terms of an accident policy.

*Carroll et al. v. Fidelity and Casualty Company* (U. S. C. C., South Car.),  
137 Fed. Rep. 1012; 34 Ins. Law Jour.  
966.

Reversed as follows:

A holder of a policy, insuring him against disability or death "resulting directly and independently of all other causes, from bodily injuries sustained through external, violent and accidental means," committed an assault and battery on a person who made no resistance, and, in striking such person in the face, injured his hand, and a few days later died from the effects of blood poisoning which developed in the wound. *Held*, that such injury, which was the direct means of causing death of the insured, being the natural result of a voluntary act committed when he was in full possession of his mental faculties, was not

"accidental," within the meaning of the policy, and did not give a right of action thereon to recover for the resulting disability and death.

*Fidelity and Casualty Co. v. Stacey's Executors* (U. S. C. C. A., 4th Cir., South Car.),  
143 Fed. Rep. 271; 74 C. C. A. 409; 5 L. R. A. (N. S.) 657; 6 Ann. Cas. 995.

**Foot gave way, causing fall on station platform—Hit by train and injured.**

Insured, a man of 75 years of age, was walking on a station platform while the train was approaching, and his foot gave way, and he fell and was injured by the approaching train. In an action on an accident policy it can not be said as a matter of law that such disorder as the sudden giving away of the foot without apparent cause was a disease within the meaning of the contract, such that the insured is precluded from recovery for this reason.

*Noyes v. Commercial Travelers' Eastern Accident Association* (Mass. S. J. C.)  
190 Mass. 171; 76 N. E. Rep. 665; 35 Ins. Law Jour. 193.

**Hand injured by pressure on it while asleep—Inflammation of metacarpal bones.**

A policy of accident insurance covering "against loss of business time \* \* \* result-

ing from bodily injuries effected during the term of this insurance through external, violent and accidental means," covers loss of business time by disease, provided the disability was proximately caused by bodily injury occasioned through external, violent and accidental means.

It appears from the testimony that on July 31, 1902, insured, being much fatigued from an extended trip, retired about 8 P. M. As he was somewhat restless, he placed his left hand between the pillow and his head, in order to raise it higher. The hand was placed on edge, with the thumb next the head, and he fell asleep in that position. Some time during the night, while asleep, he moved so that his hand, with his head continuing upon it as before, rested upon the edge of the bed rail, and he continued to sleep in that posture until 4 A. M., when he awoke. He found that his hand was wholly numb, and it continued in that condition for the space of half an hour. There was a black mark upon it, where it had rested upon the rail, and this mark existed for some time thereafter. The hand pained him a great deal during the following day, and during the next night he was compelled to call a physician. The testimony of the latter, as well as that of the family physician, who took charge of the case upon returning from his vacation, shows that the pressure on the hand while upon the bed rail resulted in an inflammation of the periosteum of the metacarpal bones lying back of the third and fourth fingers, a condition which made an operation necessary and

caused a protracted illness. *Held*, that the injury was due to external, violent and accidental means.

*Aetna Life Insurance Company v. Fitzgerald* (Ind. S. C.),

165 Ind. 317; 75 N. E. Rep. 262; 1 L. R. A. (N. S.) 422; 112 Am. St. Rep. 232; 6 Ann. Cas. 551; 35 Ins. Law Jour. 55.

**Scratch on hand—Blood poisoning—Arm amputated.**

Where a health policy insured against certain named diseases, including blood poisoning, and a proviso declared that the policy should not apply to any disease which was the result of an injury, the proviso was inoperative as to blood poisoning, which always results from an injury.

The policy provided that it should not cover "any disease or illness which results from injury." The insured received a small scratch on the hand, which resulted in blood poisoning, necessitating the amputation of the arm. *Held*, that the provision of the policy did not exclude disability by blood poisoning resulting from an accidental injury.

*Jones v. Pennsylvania Casualty Company* (N. C. S. C.),

140 N. C. 262; 52 S. E. Rep. 578; 35 Ins. L. Jour. 312; 111 Am. St. Rep. 843; 5 L. R. A. (N. S.) 932.

**Fall—Abrasion of skin on leg—Inflammation—Blood poisoning—Bacterial infection.**

The insured accidentally fell and sustained an abrasion of the skin of his right leg, which wound

appeared somewhat red and inflamed on the second day. On the eighth day a physician first saw the wound and then found insured to be suffering from blood poisoning, and two days thereafter insured died. The evidence showed that the abrasion of the skin furnished the port of entry through which bacterial infection entered the system of insured and caused the blood poisoning which was the immediate cause of his death. *Held*, that the jury was warranted in their conclusion that the death of insured resulted proximately and solely from his accidental fall.

The policy provided that the company should not be liable for death resulting from "bodily infirmity or disease of any kind." *Held*, that this exemption in the policy can not be made to apply to bodily infirmity or disease resulting from an accidental injury.

*Cary v. Preferred Accident Insurance Company* (Wis. S. C.),  
127 Wis. 67; 106 N. W. Rep. 1055; 115  
Am. St. Rep. 997 and note; 7 Ann.  
Cas. 484; 5 L. R. A. (N. S.) 926 and  
note; 35 Ins. Law Jour. 481.

**Fatty degeneration of heart—Over-exertion—Fall—Heart ruptured.**

Insured was engaged in carrying one end of a door weighing about 86 pounds along a level street. When he had proceeded about 800 yards, insured looked at the other party carrying the door and said, "I am tired," fell down and suddenly expired. An autopsy was made and it was

found the right auricle of the heart was ruptured; such a rupture as would and did in this case cause immediate death. The autopsy further disclosed that the heart was badly diseased and that insured was suffering from what is known as fatty degeneration of the heart. *Held*, that death was not due to accidental injury within the meaning of the policy, and there can be no recovery thereon, there being in fact nothing of an accidental nature, and no external cause not fully anticipated by the insured.

*Shanberg v. Fidelity and Casualty Company* (U. S. C. C., Mo.),  
143 Fed. Rep. 651; 35 Ins. Law Jour.  
649.

Affirmed as follows:

Company not liable for the death of the insured from ruptured heart, the walls of which had been weakened by what is known as "fatty degeneration," the immediate and inciting cause of the rupture being either over-exertion in assisting to carry a burden, or deep breathing following such exertion, neither of which was accidental.

*Shanberg v. Fidelity and Casualty Company* (U. S. C. C. A., 8th Cir., Mo.),  
158 Fed. Rep. 1; 85 C. C. A. 343; 19 L.  
R. A. (N. S.) 1206; 37 Ins. Law  
Jour. 296.

**Feet burned in hot air bath—Gangrene—Toes amputated—Leg amputated—Diabetes.**

The policy provided that it "shall not cover accident, injury, death, loss of limb \* \* \* from

disease in any form." Insured met with an accident in a hot air bath, by which his feet were burned. The burn was not at first considered serious. His physician treated the injury, but gangrene soon developed, rendering it necessary to first amputate two toes and finally to amputate one leg about half way between the knee and ankle. The company contended that at the time of the accident insured was afflicted with diabetes; and that the gangrene and amputation necessitated thereby was the result of the disease and not of the accident. Insured was afflicted with diabetes in a curable form previous to the time of his application, but was pronounced cured by his physician before his application was made. After the amputation and analysis of the urine, it showed the presence of sugar. There was evidence tending to show that a shock such as that suffered by the plaintiff was liable to cause diabetes. The company's own physician diagnosed the gangrene as being caused by the wound. *Held*, that the evidence was ample to justify the finding of the jury that the plaintiff was not afflicted with diabetes when he applied for and received his policy, and that the disease which developed subsequent to the accident was attributable to it.

*Jiroch v. Travelers' Insurance Company*  
(Mich. S. C.),

145 Mich. 375; 13 Detroit Leg. N. 461;  
108 N. W. Rep. 728; 35 Ins. Law  
Jour. 936.

**Appendicitis—Surgical operation—Septicaemia.**

The policy covered death "through external, violent and accidental means independent of all other causes," subject to certain conditions, among which was the following: "This policy \* \* \* subject to its conditions, covers death or disability resulting from septicaemia," etc. The insured died of septicaemia after an operation for appendicitis. *Held*, that the purpose and effect of the condition was to cover death from septicaemia only when resulting from an accident; and that the death of the insured from septicaemia resulting from an operation for appendicitis was not within its terms.

*Herdic v. Maryland Casualty Company*  
(U. S. C. C., Pa.),

146 Fed. Rep. 396; 36 Ins. Law Jour. 83.

Affirmed: (U. S. C. C. A., 3rd Cir.) 149  
Fed. Rep. 198; 79 C. C. A., 156; 36  
Ins. Law Jour. 277.

**Fall—Head injured and contusion under shoulder blade—Unconscious—Traumatic pneumonia—Cerebral hemorrhage.**

Insured met with a fall in his house on April 29, 1904, and died two weeks later. According to the testimony of the witnesses who saw the accident, deceased had gone from one room of his home to the other to get a drink, and, as he went back, fell against a dresser having a marble top and from thence to the floor. The marble slab of the dresser was whole prior to the fall, but was

found to have been broken in two either by the force with which deceased's head struck it, or by falling on the floor. Persons rushed at once to the relief of deceased and found him unconscious, a lump on his head under the right ear and a contusion under his shoulder blade an inch or more long. He was lying on his back with his head against the wall of the room. He was lifted from the floor and carried to a bed, which he never left, dying, as said, on May 13th. He seemed to be in pain until the time of his death. The attending physician testified that the death would be due to one of two conditions: traumatic pneumonia—that is, pneumonia resulting from violent injury—or cerebral hemorrhage. On cross-examination the physician stated that the insured, while in bed, might have contracted some other disease and have died from that. *Held*, that the question whether the death of insured was due to the fall and injuries received thereby was properly submitted to the jury.

If either truamatic pneumonia or cerebral hemorrhage ensued as the result of the fall, and deceased died in consequence of the disease, his death was caused proximately and solely by accidental violence within the meaning of the policy. (Judgment reversed against company.)

*Johnson v. Continental Casualty Company* (St. Louis C. A.),  
122 Mo. App. 369; 99 S. W. Rep. 473.

**Fall on icy sidewalk—Ankle injured—Fibula fractured  
—Death from injury, shock, encephalo meningitis  
and lung congestion—Arterio sclerosis.**

The policy insured against disability or death resulting directly and independently of all other causes, from bodily injuries sustained through external, violent and accidental means. The insured, while walking upon the street, slipped and fell upon the pavement and injured his ankle. There was snow and ice upon the pavement at the place of the accident, and his fall is alleged to be due to the condition of the street. He returned shortly after the fall to his club, where he had left a number of friends, and complained of suffering considerable pain in his right leg. A physician subsequently diagnosed the injury as a fracture of the fibula, the small outer bone of the ankle. He died about six months after the injury. At the time of the injury insured was 64 years of age, and at the time of his death the fracture of his ankle had completely healed. The physician who treated him continuously from the date of the accident until his death, in the proofs of death submitted to the company, gave cause of death as follows: "The primary cause due to the injury and consequent shock, due to the fall; contributory, encephalo meningitis; immediate cause, lung congestion."

He testified that encephalo meningitis was a disease. It is an old form or some form of change in the meninges that cover the brain; changes going on in the brain surface. It is an affection of the brain covering. It means a degeneration. The

proof further shows that at time of the accident the insured was suffering from a disease called "arterio sclerosis," which is a diseased condition of the arteries. The physician further testified that the injury to insured would not have produced arterio sclerosis in a man who did not have it; and that if the arteries of insured had been perfectly good, the injury to the ankle would have been trifling, but as it was the arterio sclerosis was a very strong contributing factor to his death. But for the accident insured would not have succumbed to his physical ailments in so short a time as he did. *Held*, that the death of insured was not the result directly and independently of all other causes from bodily injuries sustained from external, violent and accidental means.

*Thomas v. Fidelity and Casualty Company*  
(Md. C. A.),  
106 Md. 299; 67 Atl. Rep. 259; 36 Ins.  
Law Jour. 830.

**Liver, heart, lungs, kidneys and appendix diseased—  
Bruise on left shin.**

The policy of insurance sued on provided for indemnity if insured shall receive bodily injuries "through external, violent and accidental means," and "if death shall result from such injuries alone within 120 days, the association will pay not exceeding \$3,000 to the beneficiary named. It was shown that the insured had been in bad health for a number of years prior to his death, and had been treated repeatedly and by different physicians for congestion of the liver and palpi-

tation of the heart, and the autopsy showed that both lungs were in a state of congestion indicating pneumonia; that he had a diseased heart; that the liver was engorged with bile; that both kidneys were diseased, as was also the appendix. The autopsy did not disclose any marks of violence upon the body, and the only evidence of this fact was that of the plaintiff and a physician who examined him shortly before his death, to the effect that there was a bruise on the left shin five or six inches long and two or three inches wide. *Held*, that under the evidence there could be no recovery under the policy.

*National Association of Railway Postal Clerks v. Scott* (U. S. C. C., 2nd Cir., N. Y.),

155 Fed. Rep. 92; 83 C. C. A. 652.

**Injured operating a mower—Traumatic neuritis.**

Where plaintiff, while operating a mower, suffered a personal bodily injury, which left an external mark visible to the eye and developed into traumatic neuritis, such affection was not a disease within an accident policy providing a lesser liability in case of claims for indemnity for injuries of which there was no external mark visible to the eye or accidental injuries resulting from disease in any form.

*Kenny v. Bankers Accident Insurance Company* (Iowa S. C.),

136 Iowa 140; 113 N. W. Rep. 566; 37 Ins. Law Jour. 59.

**Thumb bitten by dog—Dog bite—Blood poisoning—Infection.**

While the insured was sitting in front of his hotel holding a little dog on his lap, some one came behind and pinched the dog's tail, whereupon the dog snapped and bit the insured on his thumb, from the effects of which, two weeks thereafter, he died. The policy under which the beneficiary sought to recover provided for loss through personal bodily injuries caused solely through accidents, due wholly to violent means, external to the body, etc. The defendant company contended that the loss came under the health provision in said policy which included "inter alia, contact with poison or with poisonous or infectious substances." *Held*, that the inoculation with a poison generating germ from a dog's saliva or from its tooth, or from insured's thumb, did not present a case, within the usual and ordinary meaning of such words, of contact with poison or with poisonous or infectious substances, and that the claim came within the provisions of the policy relating thereto.

And a claim cannot be excluded from the accident provisions of a policy if the injury is one of character described therein, and is the proximate cause of the death, merely because the injury is accompanied by a disease or sickness mentioned in the health provisions of the policy.

*Farner v. Massachusetts Mutual Accident Insurance Association* (Dauphin County C. P.),

32 Penna. County Court Rep. (May 26, 1904), 204.

Affirmed: (Pa. S. C.) 219 Pa. 71; 67 Atl. Rep. 927; 123 Am. St. Rep. 621; 37 Ins. Law Jour. 82.

**Blow on temple—Hemorrhage—Raving maniac—Insanity.**

The evidence showed that the insured, a locomotive engineer, while at work on his engine, received an accidental blow on the temple, which knocked him down and caused the blood to flow freely; that the insured was assisted to his feet by the engineer and another person who was in the cab of the engine; that these two washed the blood from the wound and rendered assistance until insured arrived at the end of his run; that insured went to his boarding house, where he remained all night; but apparently did not sleep; that he acted strangely next morning and left his boarding house without stating where he was going; that he went to a physician's office, where his wound was treated, after which he left the office. There was no testimony introduced showing the conduct of insured and his actions from the time he left this physician's office until he arrived in C, and then he was a raving maniac. In three or four days after insured arrived at C, he was sent to the state insane asylum, where he died about ten days afterwards. *Held*, that whether the death of insured was due to the accidental injury

was a question for the jury. (Judgment affirmed against company.)

*Travelers' Insurance Company v. Birmingham* (Ky. C. A.),  
32 Ky. Law Rep. 233; 105 S. W. Rep.  
894.

**Cut or scratch on finger—Infection—Blood poisoning.**

The policy contained the provision that it was issued and accepted on certain conditions, one of which is, that "this insurance does not cover, in event of accident or death, loss of limb or sight, or disability, resulting wholly or partly, directly or indirectly, from bodily or mental infirmity, or disease in any form, proximate or contributory, as a primary, secondary or final cause of accident, injury or death." While the policy was in full force, and the insured was not afflicted with any known physical or mental infirmity, he unintentionally and accidentally sustained a cut or scratch on the index finger of his left hand, from which blood at once issued, through which wound and coincident therewith it became so infected that blood poisoning was at once introduced into the circulatory system of the insured, from the effects of which he died within five days of the accidental injury. *Held*, that the death was not within said exception, and the insurance company is liable.

*Rheinheimer v. Aetna Life Insurance Company* (Ohio S. C.),  
77 Ohio St. 360; 83 N. E. Rep. 491; 15  
L. R. A. (N. S.) 245.

**Leg injured—Abrasion—Infection—Blood poisoning.**

The insured received an accidental injury to his leg, causing an abrasion of the skin. An infection started at that place, and he died fifteen days later from blood poisoning. *Held*, that the death was the result of bodily injuries, independently of all other causes.

Where death results from disease which follows as a natural, though not a necessary, consequence of an accidental physical injury, the death is within the terms of an accident policy insuring one against bodily injuries sustained through external means, independently of all other causes; the death being the proximate result of the injury, and not of the disease as an independent cause.

Bodily infirmity means a settled disease, an ailment that will probably result to some degree in the general impairment of physical health and vigor, and the words "bodily infirmity," as used in an accident policy exempting the insurer from liability, only includes an ailment of a somewhat established or settled character, and not merely a temporary disorder arising from a sudden and unexpected derangement of the system.

*French v. Fidelity and Casualty Company* (Wis. S. C.),

135 Wis. 259; 115 N. W. Rep. 869; 17 L.

R. A. (N. S.) 1011; 37 Ins. Law Jour.  
385.

**Accidental injury—Infection.**

The word "infection," as used in the policy, relates to external injuries, and does not include internal inflammation where pus is formed by the presence of pus germs.

In an action on an accident insurance policy to recover for the death of the insured, who died from an accidental injury, the condition that such death must have resulted "necessarily and solely" from such injury will be satisfied by showing that the injury was the predominating and efficient cause of the insured's death. The fact that other conditions were set in motion by the injury, which may have contributed to such result, is immaterial.

*Continental Casualty Company v. Colvin*  
(Kansas S. C.),  
77 Kan. 561; 95 Pac. Rep. 565.

**Leg injured on car—Abrasion on leg—Inflammation—Erysipelas.**

The policy provided for a stipulated sum in case the insured should sustain bodily injuries "effected solely through external, violent and accidental means \* \* \* which injuries shall directly and independently of all other causes, result in loss of life." The insured died of erysipelas. The plaintiff testified that the insured, while getting off a street car, suffered an injury to her right leg; that he helped her into the house, where he put liniment and a bandage on her leg; that the third day after receiving the injury, swelling and

inflammation began in her limb, spreading clear up to her body after a while. Another witness testified to seeing a scratch on the right leg of insured. A physician testified to the injury and to the erysipelas. In answer to a question he stated, "I don't know what provoked the attack from that germ; if there was an abrasion, that would probably give entrance." Another physician testified to the fact of the erysipelas, and also that "her leg was very much swollen, and it was drop-sical; there was a great deal of water in the tissues—serum from the blood. In my opinion she had erysipelas; that is a germ disease, specific poisoning. It most frequently enters the system through an avenue of abrasion, through the surface; it frequently appears where there is no abrasion at all." Held, that this evidence did not establish the fact that the erysipelas was the result of the injury.

*McAuley v. Casualty Company of America*  
(Mont. S. C.),  
37 Mont. 256; 96 Pac. Rep. 131.

Reversed as follows:

That an injury to the person causing an abrasion was the direct and proximate cause of her death, so as to allow recovery under an accident policy, is sufficiently shown by evidence that erysipelas, from which the person died, manifested itself within the usual time, and that erysipelas can be contracted only by introduction of the germ through an abrasion of the skin, though

there is no other evidence as to how or when the germ was communicated.

*McAuley v. Casualty Company of America*  
(Mont. S. C.),  
39 Mont. 185; 102 Pac. Rep. 586; 38  
Ins. Law Jour. 1022.

**Strain or exertion in controlling horse—Blood vessel ruptured—Brain ruptured—Hardening of arteries—Arterio sclerosis.**

Where the evidence showed that insured previous to taking a horseback ride, was in good health; that while riding his horse became unmanageable, and, in his efforts to hold him, ruptured a blood vessel of the brain, evidence was introduced pro and con as to his condition of health by physicians who either had treated him or had taken part in an autopsy over his body. *Held*, that where the testimony of several physicians was conflicting as to whether or not the arteries of the insured were diseased, and whether or not his struggle with the horse could have caused a rupture of his arteries, it was not error of the court to refuse a peremptory instruction for the company.

The defendant alleged that insured died of disease. The court instructed, in effect, that if by reason of the extraordinary exertion to control his horse, or by the movements of the horse and independent of all other causes, a blood vessel in insured's brain was ruptured, and that the injury necessarily and solely caused his death, they

should find for the plaintiff, though the blood vessel had been weakened or hardened by prior disease, and called the jury's attention to the fact that if the disease, if any, he had, had no part in causing the rupture, and the death of the insured, it was not a defense. By another instruction the Court called attention to the fact that if insured was suffering from disease which tended to weaken or harden the blood vessels in the brain, and that such disease caused or actively co-operated with any accidental injury to the insured's brain, and that his death resulted from such co-operating, the law was for defendant. *Held*, that the instructions were not conflicting. (Judgment affirmed against company.)

*Continental Casualty Company v. Semple*  
(Ky. C. A.),  
112 S. W. Rep. 1122.

**Physical exertion climbing steps—Rarified atmosphere  
—Climatic conditions—Disease.**

Where insured, in an accident policy indemnifying only for injury or death arising from physical bodily injury through external, violent and accidental means, died as a result of physical exertions in climbing steps at a hotel, carrying heavy satchels, because of the rarified condition of the atmosphere, he died from doing what he intended to do, though the result was not anticipated, and his death was not the result of accidental means.

The word "accident," in accident policies, means an event which takes place without one's

foresight or expectation. A result, though unexpected, is not an accident; the means or cause must be accidental. Death resulting from voluntary physical exertion or from intentional acts of insured, is not accidental, nor is disease or death caused by the vicissitudes of climate or atmosphere the result of an accident; but where, in the act which precedes an injury, something unforeseen or unusual occurs which produces the injury, the injury results through accident.

*Schmid v. Indiana Travelers' Accident Association* (Ind. C. A.),  
42 Ind. App. 483; 85 N. E. Rep. 1032;  
38 Ins. Law Jour. 101.

**Fall on wet ground—Shock of fall and wetting lowered vitality—Pneumonia.**

By the terms of a policy an accident insurance company undertook, if, at any time during the continuance of the said policy, the insured should sustain any bodily injury caused by violent, accidental, external, and visible means, then, in case such injury should, within three months from the occurrence of the accident causing such injury, directly cause the death of the insured, to pay the legal personal representatives of the insured the capital sum of 1,000 pounds. The policy contained the following proviso: "Provided always, and it is hereby as the essence of the contract agreed as follows: that this policy only insures against death where accident within the meaning of the policy is the direct and proximate cause

thereof, but not where the direct and proximate cause thereof is disease or other intervening cause, even though the disease or other intervening cause may itself have been aggravated by such accident, or have been due to weakness or exhaustion consequent thereon, or the death accelerated thereby.” The assured, while hunting, had a heavy fall, and, the ground being very wet, he was wetted to the skin. The effect of the shock and the wetting was to lower the vitality of his system, and being obliged to ride home afterwards, while wet, still further lowered his vitality. The effect of this lowering of his vitality was to cause the subsequent development of pneumonia in his lungs, of which he died. The pneumonia was not septic or traumatic, but arose as a direct and natural consequence from the fact that the diminution of vitality caused through the accident, as above mentioned, allowed the germs called “pneumococci,” which in small numbers are generally present in the respiratory passages, to multiply greatly and attack the lungs. *Held*, that the death of the assured was directly caused by accident within the meaning of the policy, and that the case did not come within the proviso therein, and the company was consequently liable on the policy.

*Etherington v. Lancashire & Yorkshire  
Accident Insurance Company* (Eng.  
C. A.),

1 King’s Bench (The Law Reports,  
Apr. 1, 1909), 591; W. N. 35; 125  
L. T. 328; 53 G. J. 266.

**Ran into door, struck eye on hinge—Hemorrhage of eye—Loss of eye—Blindness.**

The policy insured against the entire and irrevocable loss of one eye, caused directly and independently through external, violent and accidental means. The insured ran into a door at night time and was struck in the eye by a hinge which caused the total loss of sight. The experts, who were called to testify, all agree that the loss of sight was total and irrecoverable. The company questions the right of insured to recover on the ground that the diseased condition of the eye at the time of the accident was indirectly the cause of the blindness, and introduced expert testimony to that effect. One of the experts called on behalf of the insured, who had treated the case prior to the time of the accident, testified that from his knowledge of the case the diseased condition of the eye had no effect in producing blindness, and that the hemorrhage, produced by the injury, was sufficient in itself to cause entire blindness. *Held*, that the evidence warranted a verdict finding that the loss of eye resulted from an injury directly and independently through external, violent and accidental means, and not from a prior diseased condition of the eye.

*Travelers' Insurance Company v. McInerney* (Ky. C. A.),  
119 S. W. Rep. 171; 38 Ins. Law Jour.  
589.

**Eye struck with small piece of steel—Inflammation of eye—Inflammation spread to other eye—Loss of sight of both eyes.**

The company contended that there was no evidence showing that insured's loss of sight of both eyes resulted alone from the injury to the right eye. The insured testified that a small piece of steel had struck him in the right eye; that the eye became inflamed; that then the inflammation spread to the other eye, and that the sight of both eyes was lost. Two medical experts testified that, through sympathy, one eye is often affected by an injury to the other. *Held*, that the proof was sufficient to sustain a finding that the loss of the sight of both eyes was due to the injury to his right eye, and not as the result of any kind of a disease.

*Aetna Life Insurance Company of Hartford v. Griffin* (Texas C. C. A.),  
58 Tex. Civ. App. 198; 123 S. W. Rep.  
432; 39 Ins. Law Jour. 284.

**Glanders, an infectious disease, contracted while cleaning stables.**

The policy indemnified assured "against loss from the liability imposed by law upon the assured for damages on account of bodily injuries or death suffered while this policy is in force, by any employe \* \* \* of the assured while on duty within the factory, shop or yard described in the schedule \* \* \* in and during the operation of the trade or business described in the schedule." While the policy was in force one Jeremiah

Barry, who was employed by the plaintiff as a hostler in its stables, had the care of horses which were afterwards found to have been suffering from the glanders and were killed, and Barry was directed to assist in cleaning up the stalls. No notice was given to him that the horses suffered or had suffered from glanders. The glanders is an infectious disease, and subsequently Barry was attacked by it and brought suit against the plaintiff for negligently putting him to work on the horses and thereby exposing him to the disease. *Held*, that the injuries received by the employe were within the meaning of the policy.

*H. P. Hood & Sons, Inc., v. Maryland Casualty Company* (Mass. S. J. C.),  
206 Mass. 223; 92 N. E. 329; 30 L. R. A.  
(N. S.) 1192; 138 Am. St. Rep. 379;  
39 Ins. Law Jour. 1340.

**Fall from buggy—Head injured—Auto-intoxication—  
Prior injury and disease.**

The policy insured against death caused by accidental injuries "independently of all other causes." Insured on April 6 fell from his buggy, striking his head, and on April 23 he died. The cause of his death was auto-intoxication. Several months prior to the fall from his buggy insured had been thrown from a street car, resulting in the breaking of several of his ribs and the development of auto-intoxication. It was shown that the auto-intoxication was often produced by injuries, or anything lowering the vitality and re-

tarding the intestines in performing their functions. *Held*, that the evidence was insufficient to sustain the verdict that death was caused by auto-intoxication resulting from injuries sustained in the fall from the buggy "independently of all other causes."

*Held*, that "if the injury or death is due to an accident, without the intervention of any diseased condition of the body, the company is liable. It is not liable where the injury or death happened in consequence of the disease or bodily infirmity, and not of the accident, or where it is due both to the accident and the disease. But where the accident, and not the diseased condition, is the proximate cause of death the company is liable."

*Aetna Life Insurance Company v. Bethel*  
(Ky. C. A.),  
140 Ky. 609; 131 S. W. Rep. 523; 40  
Ins. Law Jour. 108.

**Strain caused by carrying heavy basket—Appendicitis  
—Surgical operation—Prior attack of appendicitis—  
Susceptibility to appendicitis.**

The policy insured against bodily injury, effected directly and independently of all other causes, through external, violent and accidental means. Some three years prior to his death insured had suffered an attack of appendicitis, for which no operation was performed. Just a few days prior to his death he strained himself. Physicians were called and they decided he was suffering from appendicitis. An operation was per-

formed, and it was found that the appendix was gangrenous, perforated in three places, and obtained a calculus of foecal concretion about the size of a small pea. The first attack, because of adhesions and conditions created by it, left the appendix in an abnormal condition, and made it susceptible to other attacks arising from straining of that portion of the body. The second attack arose from the strain caused by carrying the basket of soil described herein. Such attack would not have occurred from such strain, except for the conditions created by the first attack. *Held*, that there could be no recovery. Where an injury and an existing bodily disease concur and co-operate to cause death, no liability exists. If, however, the disease results from the injury, the company is liable, though both co-operate in causing death. The distinction made in this particular is found in that class of cases where the infirmity or disease existed in the insured at the time of the injury, and, on the other hand, that class of cases where the disease was caused and brought about by the injury. And even in cases where the insured is afflicted at the time of the accident with some bodily disease, if the accidental injury be of such a nature as to cause death solely and independently of the disease, liability exists.

*Stanton v. Travelers' Insurance Company* (Conn. S. C. E.),

83 Conn. 708; 78 Atl. Rep. 317; 34 L. R. A. (N. S.) 445; 40 Ins. Law Jour. 160.

**Slid into cement block base while playing baseball—  
Abdomen bruised—Appendicitis—Surgical operation  
—Prior attack of appendicitis.**

While playing baseball, the insured, in sliding for a base, slid into a cement block used for the base, his abdomen going across it. He showed evidence of pain at the time. A few days afterwards he submitted to an operation for appendicitis, from which he died. At the time of such operation, the doctors found evidence of injuries—bruises and discoloration—upon his abdomen. The autopsy revealed a gangrenous condition of the appendix. Insured had consulted a physician once or twice somewhat more than a year previous to his death. The physician found some tenderness over the region of the appendix on pressure, and some soreness, and that he was suffering from a mild case of appendicitis, catarrhal in nature. The physician prescribed a laxative, and never heard him complain after that. *Held*, that the evidence was sufficient to justify the finding of the jury that insured was injured by accidental means (the sliding into the base not being expected or intended), and that the injury so received was the proximate cause of his death.

*Held*, further, that under the instruction, "If you find that Ludwig had at some previous time suffered from an attack of appendicitis, and he had fully recovered therefrom, so that immediately before the external, accidental injury at the ball game, if you find there was such an injury received by him, there was then no appendicitis present, but because of such previous attacks

Ludwig was more susceptible to the disease, and such an injury started it, there may be a recovery, although the external, accidental injury would not have produced the appendicitis if his appendix had never been previously impaired by disease. In other words, if Mr. Ludwig recovered from his former attack of appendicitis, if he had it, so that such disease no longer existed in his body, and there was only a susceptibility to have it in case a proper exciting cause should arise, and in this fall on the cement slab on the base is by you found by a fair preponderance of the evidence to be such exciting cause, and to be external, violent and accidental injury, the amount of the policy would become payable, upon proper notice and proof being made. But if, because of the former attack, there was not merely a susceptibility to a further attack, but the actual disease itself existed, liable to be rendered active and virulent by an injury such as that suffered by Mr. Ludwig, in that event the active disease which resulted in death would not be regarded as the result of the fall alone, but as joint result of the fall and latent disease, and there can be no recovery," properly submitted the question.

*Ludwig v. Preferred Accident Insurance Company* (Minn. S. C.),  
113 Minn. 510; 130 N. W. Rep. 5; 40  
Ins. Law Jour. 844.

**Chloroform administered prior to surgical operation—  
Hidden disease of the heart—Acute dilation of heart.  
Death from chloroform administered by physi-**

cians preparatory to the performance of an operation, due to a hidden disease of the heart, is death by "accident" within the meaning of an accident insurance policy.

In an action on an accident policy, a *prima facie* case of "death by accident" was made out, where plaintiff showed that the insured was in apparent good health up to the time that chloroform was administered to him for the purpose of relieving him from pain while undergoing an operation; that he died while the chloroform was being administered; that the immediate cause of death was acute dilation of the heart caused by the administering of the chloroform, and that insured's diseased condition did not contribute to his death and had nothing to do with causing it.

The policy stipulated that the company would not be liable if insured's death should be caused "wholly or in part by bodily or mental infirmity or disease." *Held*, that the language of the exception means nothing more than that an accident, and not bodily or mental infirmity, was the proximate cause of death.

*Beile v. Travelers' Protective Association of America* (St. Louis C. A., Mo. App.),

155 Mo. App. 629; 135 S. W. Rep. 497;  
40 Ins. Law Jour. 1028.

**Bowling strained his side—Abdominal muscles injured  
—Appendicitis.**

The policy insured against loss of time from the effect of "personal bodily injury caused solely

by external, violent and accidental means." The insured, while bowling, strained his side, and his physician found a tenderness of the muscles of the front and back of the abdomen on the right side, which could be ascertained by the touch; and in a few days the insured developed appendicitis, caused directly by the irregular working of the muscles and parts of the body around the abdominal region, which resulted from the strain, and insured was disabled from work for four months. *Held*, that such a strain was not an accidental strain, and although it produced an unintentional result and consequent injury, there could be no recovery under a policy insuring against injuries resulting from accidental means.

*Lehman v. Great Western Accident Association* (Iowa S. C.),

155 Iowa 737; 133 N. W. Rep. 752; 42  
L. R. A. (N. S.) 562; 41 Ins. Law  
Jour. 562.

**Fall from train—Loss of sight—Cataract.**

Insured lost his eye-sight as the result of an injury caused by falling from a train. There was evidence that the fall merely hastened the loss of sight, which would have ultimately been destroyed because of a cataract, had the fall not occurred. *Held*, that there could be no recovery where the loss of sight was caused by accidentally falling from a train, where such fall did not, independently of all other causes, cause the loss of sight, such fall having merely hastened the loss,

which would have ultimately occurred because of the cataract.

*Penn v. Standard Life & Accident Insurance Company* (N. C. S. C.)

158 N. C. 29; 73 S. E. Rep. 99; 42 L. R. A. (N. S.) 593; 41 Ins. Law Jour. 550.

Insured's petition for rehearing denied:

Where an accident caused a diseased condition, which, together with the accident, resulted in injury or death complained of, the accident was the sole cause within an accident policy insuring against bodily injuries effected directly and independently of all other causes.

Where, at the time of the accident, insured was suffering from some disease which had no causal connection with the injury or death resulting from the accident, the accident was the sole cause within the accident policy.

Where, at the time of the accident to insured, there was an existing disease, which, co-operating with the accident, resulted in injury or death, the accident was not the sole cause or the cause independent of all other causes within the policy.

*Penn v. Standard Life & Accident Insurance Company,*

160 N. C. 399; 76 S. E. Rep. 262; 42 L. R. A. (N. S.) 597; 42 Ins. Law Jour. 145.

Fall while extinguishing fire—Leg injured—Leg amputated—Prior injury and lameness.

The insured claimed that he sustained injuries to his leg from a fall while attempting to extinguish a fire, which necessitated amputation of his leg, and introduced evidence to sustain the claim. The company introduced testimony to the effect that insured was lame prior to the accident, and that the amputation was made necessary by reason of a prior injury. *Held*, that since there was some evidence from which the jury might have found that the injury resulting in the loss of plaintiff's leg was due to some other cause than the injury received while trying to extinguish the fire, the Court properly submitted this disputed question of fact to the jury. (Judgment affirmed against company.)

*Aetna Life Insurance Company v. Crabtree* (Ky. C. A.),  
146 Ky. 368; 142 S.W. Rep. 690; 41 Ins.  
Law Jour. 555.

Splashing of water from washtub—Inflammation of eye due to gonorrhea—Gonorrhea caused by gonorrhreal germs—Loss of sight.

Under a policy indemnifying against loss of sight of an eye by accident, an inflammation of the eye caused by the splashing of water from a wash-tub, in which insured was washing clothing, resulting in the loss of the eye, was accidental.

Insured testified that water was accidentally

splashed into her eye while doing her family washing with a washtub and washboard; that the eye gave her immediate pain; that it became inflamed, and that, as a result, her sight was destroyed. The physician who attended insured testified that the loss of sight was caused by inflammation due to gonorrhea, which could have been caused only by gonorrhreal germs being brought in contact with the eye.

*Sullivan v. Modern Brotherhood of America* (Mich. S. C.),  
167 Mich. 524; 133 N. W. Rep. 486; 42  
L. R. A. (N. S.) 140; Ann. Cas 1913a,  
1116; 41 Ins. Law Jour. 286.

**Ptomaine poisoning—Enterocolitis.**

When insured joined the order the constitution provided that payment of indemnity for injuries through external, violent and accidental means should not extend "to any bodily injury of which there shall be no external and visible sign." By the amendments the definition of "external, violent and accidental means" was further particularized so as to exclude "any death, disability or loss, resulting from infection, excepting where the same results from an open wound," and "any death, disability or loss, of which there shall be no external and visible mark on the body (the dead body not being such mark except in case of drowning or asphyxiation)," *Held*, that the by-law was binding, and there could be no recovery for death resulting from enterocolitis, resulting

from ptomaine poisoning, there being no external or visible mark on the body.

*Order of United Commercial Travelers of America v. Smith* (U. S. C. C. A., 7th Cir.), Wisconsin),  
192 Fed. Rep. 102; 112 C. C. A. 442;  
41 Ins. Law Jour. 779.

**Struck by boom of sail—Leg broken in three places—Chloroform administered to set leg—Arterio-sclerosis.**

Insured was struck by the boom of a sail, which resulted in the breaking of his leg in three places. Because of the swollen condition of the limb, at the time the physicians arrived, it was necessary to put it in a temporary splint. Two weeks later, the temporary splint was removed and the leg was permanently set. Chloroform was used as an anaesthetic. Insured was examined before the chloroform was administered and nothing abnormal was noticed. Two hours after this, and immediately after he had raised himself up in his bed for the purpose of taking nourishment, insured died. Physicians testifying in behalf of the beneficiary stated the the pain and suffering following the accident was the cause of insured's death, and that had it not been for the accident he would not, in their opinion, have died. Physicians testifying for the company stated that arterio sclerosis caused his death, and that an autopsy showed that he was afflicted with sclerosis of at least two years' standing. Rebutting this was the testimony of a physician who, two years

previous, had examined deceased for life insurance and found him at that time to have been physically sound. Company held liable.

*Standard Accident & Life Insurance Company v. Wood* (Md. C. A.),  
116 Md. 575; 82 Atl. Rep. 702; 41 Ins.  
Law Jour. 1105.

**Illness—Fall on floor—Head injured, neck and shoulder bruised, and arm cut.**

The policy indemnified against injury or death caused by external, violent and accidental means. The evidence showed that insured had been ill for some time; that on the day preceding his death he was alone in his room and was heard to fall to the floor. Members of the family immediately went to him and had him placed in his bed. He complained of pain in the back of his head, and it was noted that his neck and shoulders had been bruised and a mark or cut was discovered on his arm. His death resulted shortly after he experienced the fall. *Held*, that there was sufficient evidence that insured's death was occasioned through accident to entitle plaintiff to have her case submitted to the jury.

(Order granting plaintiff's motion for new trial below. Here affirmed against company.)

*McEwen v. Occidental Life Ins. Company*  
(Calif. D. C. A.),  
20 Calif. App. 477; 129 Pac. 598; 42  
Ins. Law Jour. 274.

Judgment of trial court, in favor of company, affirmed as follows:

Insured had been confined to his home with a serious illness for several days. His condition was such that he required the constant nursing of his wife and daughter. On the night of his fall his daughter was taking care of him. During the night insured wished to go to the bathroom. He arose from a recumbent position and sat upon the edge of the bed with his feet upon the floor. While his daughter was out of the room to call the mother the insured fell. On their return to the room he was found with his head doubled under his shoulder. He was unconscious. He died about twenty-four hours afterwards. There was medical testimony to the effect that while it was possible that a man might die from such a fall it was improbable, the fall being of insufficient force to break any bones. The only evidence of injury was on the surface. No post-mortem was performed. *Held*, that under the evidence the Court was warranted in concluding that there was no sufficient showing to support the burden of proof which was upon the plaintiff.

*McEwen v. Occidental Life Insurance Company* (Cal. S. C.),  
172 Cal. 6; 155 Pac. Rep. 86; 47 Ins. Law Jour. 594.

**Fall—Back injured—Ascending paralysis.**

The policy insured against bodily injury "causing at once total and continuous disability to en-

gage in any labor or occupation," and against death resulting "necessarily and solely from such injury." Insured was a blacksmith employed in the machine shops of a railroad company. While indulging in some rough play with his fellow workmen, he kicked at one of his playmates, who grabbed his foot and jerked it in such a way as to throw him on his back. Insured claimed that the fall hurt his back and he was unable to work that afternoon. After the fall he reported for duty on eight consecutive days and received full pay therefor. However, the evidence shows that he complained of severe pain in his back during all this time and made only a pretense of working, and that his fellow blacksmiths did his work. Two days after the fall he went to a physician who found a discoloration of the skin on the back. About a month later insured was treated by a physician in another town, who diagnosed his case as malaria. A few days later he was admitted to a railroad hospital and was found to be afflicted with slowly ascending paralysis, a disease that first manifests itself in the extremities and ascends until it reaches the vital organs, when death ensues. Insured died at this hospital forty-three days after the accident. Prior to his injury he was a strong and healthy man and was not infected with any disease that could cause paralysis. *Held*, that the evidence was sufficient to sustain the finding of the jury that the injury received by insured was the cause of his death, and that such injury resulted in total and con-

tinuous inability to engage in work or labor of any kind.

*Crotty v. Continental Casualty Company*  
(Kansas City C. A.),  
163 Mo. App. 628; 146 S. W. Rep. 833;  
41 Ins. Law Jour. 1120.

**Abrasions or wound on cheek—Infectious disease.**

The policy insured against death solely by external, violent and accidental means. The attending physician of the assured testified to the discovery of the abrasion of the skin upon the cheek, and to his opinion that the disease from which the assured died was wholly infectious, and could not have resulted, except through some wound or abrasion of the skin. He also testified that it made its first appearance at the edges of the alleged wound, and that in his opinion it resulted solely from the infection of such wound. This testimony was corroborated by other medical testimony. *Held*, that this evidence was sufficient to sustain a finding that the death of the assured was the proximate result of the wound or abrasion referred to.

Proof of the appearance of a wound on insured's face was sufficient to support a finding that the cause of such wound was violent and external, and in the absence of direct evidence as to whether the wound was received through accidental means, the presumption arises that such wound was not intentionally inflicted either by the assured or by another. The presumption is available to the plaintiff in an action on an acci-

dent policy as affirmative evidence, and the jury may draw therefrom an inference of fact that the wound was caused by accidental means.

*Caldwell v. Iowa State Traveling Men's Association* (Iowa S. C.),  
156 Iowa 327; 136 N. W. Rep. 678; 41  
Ins. Law Jour. 1375.

**Fall in street car—Rupturing blood vessel—Apoplexy.**

Although an insured under an accident policy is fatally diseased and is so afflicted that he will die from such affliction within a few hours, yet, if by some accidental means his death is sooner caused, it would be death by accident.

In this case, plaintiff seeks to recover on a policy of accident insurance on the theory that the insured, her husband, accidentally fell in a street car, thereby rupturing a blood vessel in his brain. The company insists that there was no accident, but that insured was suddenly stricken with apoplexy, whereby he sank to the floor of the car, and thereafter died from natural cause. After insured was carried into his house, and about thirty minutes after he fell, he complained of his arm hurting him, and stated that he fell to the floor of the car and hurt his arm.

(Judgment for company below, was here reversed.)

*Hooper v. Standard Life and Accident Insurance Company* (Kansas City C. A.),  
166 Mo. App. 209; 148 S. W. Rep. 116;  
44 Ins. Law Jour. 1527.

**Incomplete combustion in garbage incinerator—Carbon monoxide poisoning—Myocarditis.**

The policy insured against death resulting directly and independently of all other causes from bodily injuries effected solely through external, violent, and accidental means. Insured was 62 years of age, and apparently a strong, healthy man. He was employed as general overseer of a large incinerator used for the destruction of garbage. Previous to its acceptance the incinerator was tested. In the course of the test the dampers were closed for a period, causing an imperfect combustion and causing smoke to escape into the room where insured was working. At the time insured complained of this smoke. It was shown by a chemist that smoke always indicates an incomplete combustion, and that in incomplete combustion there is always carbon monoxide, a poisonous gas. A physician testified that in his opinion insured's death had been caused by gas poison. Another physician, who made the autopsy, testified that death was due to myocarditis. *Held*, that there was sufficient evidence to warrant the finding that insured had died from accidental poison.

*Potter v. Aetna Life Insurance Company*  
(Wash. S. C.),  
71 Wash. 374; 128 Pac. Rep. 647; 42  
Ins. Law Jour. 460.

**Fall—Struck iron handle on wagon seat—Duodenum or pancreas ruptured.**

The policy insured against "bodily injuries sustained through accidental means resulting directly, independently and exclusively of all other causes in death." *Held*, that where the insured sustained an injury, and such injury by aggravating a disease accelerated his death, then such death resulted directly, independently, and exclusively of all other causes within the meaning of the policy. In other words, if death would not have occurred when it did but for the injury resulting from the accident it was the direct, independent and exclusive cause of death at that time, even though death was hastened by the diseased condition. Evidence held to support a finding that a rupture of the duodenum or pancreas which caused the death was caused by falling and striking an iron handhold on a wagon.

*Fidelity and Casualty Company v. Meyer*  
(Ark. S. C.),

106 Ark. 91; 152 S. W. Rep. 995; 44 L. R. A. (N. S.) 493; 42 Ins. Law Jour. 549.

**Suicide—Sudden insane impulse—Permanent insanity—Infirmity.**

Policy contained a provision for non-liability for disability or death resulting from accidental injury "if the occasion of the accident be bodily or mental infirmity." Insured in his relations with his wife disclosed brutal and fiendish characteristics. He was of an intense and emotional

temperament, alternately profuse with terms of endearment and savage in vituperation. He was cruel to his wife and accused and cursed her and threatened repeatedly to beat her and often quickly repented. He frequently threatened to kill her and injured her seriously at various times. On one or two occasions his wife left him, but returned again. Finally she sued him for divorce. He followed her to her home and tried to induce her to return, and upon her refusal he drew a revolver and shot her twice through the body, and then turned the revolver upon himself and took his own life. There was expert testimony to the effect that insured was of unsound mind and had been so for some time. *Held*, that the finding that insured's death was occasioned by a sudden insane impulse and therefore accidental was not sustained by the evidence, but that such evidence showed that his insanity was of a permanent character and therefore an "infirmity and his death not covered by the policy.

*Layton v. Interstate Business Men's Accident Association* (Iowa S. C.),  
158 Iowa 356; 139 N. W. Rep. 463; 42  
Ins. Law Jour. 458.

**Wrench or blow to side of abdomen—Pancreatitis.**

While riding in a street car one of the axles of the car broke and let the body of the car down. When the accident occurred the car swayed violently from side to side. Insured caught the bottom of the seat with his hand but was thrown by the oscillation of the car into the aisle and then in

another movement of the car was thrown violently on the back of the seat on which he had been seated. The side of his abdomen received a blow from the seat. Within a short time afterward insured suffered from pancreatitis. Several physicians testified that pancreatitis could be induced by a blow or a wrench. The Court instructed the jury that if they believed from the evidence that at the time of the breaking down of the car insured sustained a wrench or blow, and that such wrench or blow, if any, alone caused his death, they should find for the plaintiff. *Held*, that there was sufficient evidence that insured's death was due to a wrench, etc. (Company liable.)

*Travelers' Insurance Company v. Davies*  
(Ky. C. A.),  
152 Ky. 600; 153 S. W. Rep. 856; 42  
Ins. Law Jour. 849.

**Fall from wagon—Inflammation of liver.**

One of insured's employes testified that he had seen insured fall from a wagon. Insured's wife testified that the fall brought on his sickness. A physician who attended insured testified that he found him suffering from an acute inflammation of the liver, which seemed to have been caused by some external injury. *Held*, that the evidence sustained the finding that insured's death was caused by inflammation produced by a fall.

*Huguenin v. Continental Casualty Company* (S. C. S. C.),  
94 S. C. 138; 77 S. E. Rep. 751; 42 Ins.  
Law Jour. 850.

**Fall on floor—Hemorrhage from ear and nose—Fracture at base of skull—Apoplexy.**

Insured was a robust man and apparently free from any disease or ailment, of simple habits and indulging in no excesses in eating, drinking or smoking. At about 8 o'clock one morning insured arose from his bed and went to the bathroom to shave and take his bath. He was absent from the bedroom about thirty minutes. Upon returning to the bedroom, and while in the act of seating himself on a stool it slipped from him and he fell back on the floor. Upon getting up he went over to the bed in which his wife was lying, sat down on the side of it, and reached around for his wife who was back of him. She then saw that he was hurt. She arose, grabbing hold of him when his head fell back on her shoulder, and laid him down on the bed and called for help. As she laid him down she saw blood oozing out of his right ear and nose. Physicians called by the plaintiff testified that in their judgment insured's death resulted from a hemorrhage caused by a fracture at the base of the skull. There was testimony on behalf of the defendant that insured's death was caused by apoplexy. *Held*, that the evidence submitted was sufficient to sustain a verdict that insured's death was caused by external injuries resulting from a fall.

*Goode's v. Order of United Commercial Travelers of America* (St. Louis C. A.),

174 Mo. App. 330; 156 S. W. 995; 42 Ins. Law Jour. 1206.

**Struck knee—Knee swelled—Effusion of water and serum removed—Blood poisoning—Bright's disease.**

The policy insured against death resulting from external, violent and accidental means. While working with a team insured was accidentally struck on his knee. The knee commenced to swell and he obtained treatment from a physician who relieved the injured part by removing an effusion of water and serum. Not obtaining satisfactory relief from the treatment the bandage was removed and a milder dressing applied. Two days later insured became confined to his bed, from which he never arose, and died about a month later. It is claimed by the company that the death was due to Bright's disease, while evidence was offered on behalf of plaintiff that death resulted from blood poisoning caused by injury to the knee.

After instructing the jury on plaintiff's theory, the Court continued: "If on the other hand you find from the evidence that the insured received a bodily injury through external, violent and accidental means, and that a disease commonly known as Bright's disease or blood poisoning resulted and was brought about by said injury, and that said disease so resulted from the injury, if you find it did so result, contribute to, or hasten the death of said insured, that would be such a disease or bodily infirmity as would prevent recov-

ery." *Held*, that the instruction given properly submitted the question to the jury.

*Rathjen v. Woodmen Accident Association* (Neb. S. C.),  
93 Neb. 629; 141 N. W. 815; 42 Ins.  
Law Jour. 1205.

**Delirious from typhoid fever—Found on ground under window—Fell or jumped from window—Unconscious.**

Insured, while delirious from typhoid fever, was left in a room containing a single window, which was covered by a screen. Outside of the window was a balcony. He was left alone momentarily, and upon the return of the attendant it was found that the room was vacant and the screen was torn from the window, and that the insured was on the ground under the window, unconscious, with severe injuries, which, according to physicians, probably would have caused his death, even if he had not been suffering from typhoid fever. *Held*, that the words "accidental means," as used in the policy, signified a happening unexpectedly without intention or design, and it could not be said as a matter of law that insured's injuries did not result from accidental means.

Also, it could not be said as a matter of law that his death was not effected "directly and independently of all other causes" through accidental means. The disease may have been simply a condition and not a moving cause of the fatal

injuries. Whether or not death under such circumstances results directly and independently from the accident, is a question of fact.

*Bohaker v. Travelers' Insurance Company* (Mass. S. J. C.),

215 Mass. 32; 102 N. E. Rep. 342; 46  
L. R. A. (N. S.) 543; 42 Ins. Law  
Jour. 1366.

#### **Asphyxiation—Apoplexy.**

The insured was found dead in his bath-room. The policy insured "against bodily injuries sustained through accidental means (excluding suicide, sane or insane, or any attempt thereat, sane or insane) and resulting directly therefrom independently and exclusively of all other causes." In an action on the policy the testimony on behalf of the plaintiff tended to show that insured's death was by accidental asphyxiation. There was testimony on behalf of the company tending to show that death was due to apoplexy, preceding the asphyxiation. *Held*, that under the evidence it was proper for the Court to submit to the jury the question of what caused the insured's death; and the judgment for plaintiff was affirmed.

*Columbian National Life Insurance Company v. Miller* (Ga. S. C.),

140 Ga. 346; 78 S. E. Rep. 1079; Ann.  
Cas. 1914-D, 408; 42 Ins. Law Jour.  
1545.

**Fall—Struck chest on post—Pulmonary hemorrhage.**

Evidence that insured fell striking his chest across a post which produced a mark on his chest and that he died of a pulmonary hemorrhage was sufficient to sustain a finding of the jury that his death resulted solely from accidental, external, and violent means.

*Franklin v. Continental Casualty Company* (Ill. App.),  
184 Ill. App. 259; 47 Nat'l Corp'n Rep.  
446.

**Fall—Hip bruised—Stomach and side injured—Aperture in colon, etc.—Infection—Peritonitis.**

Insured suffered a fall by which he sustained a severe bruise on his hip. At the end of the first month after said injury insured was much better. Thereafter, however, he began to suffer pains in his stomach and side and was not able to do any work. About six weeks after the injury he complained of feeling ill, and one morning was found dead in bed. An autopsy was performed, disclosing an aperture in the transverse colon. Through this, matter passed into the peritoneum, causing infection or poisoning, resulting in peritonitis, which caused his death. The autopsy disclosed that the trouble had existed for some weeks. *Held*, That this evidence warranted the finding of the jury that the fall had caused the injury to the

colon and that such injury was responsible for insured's death.

*Pacific Mutual Life Insurance Company v. McCabe* (Ky. C. A.),  
157 Ky. 270; 162 S. W. Rep. 1130; 43  
Ins. Law Jour. 507.

**Fall upon floor—Arm, face and head injured—Paralysis.**

Insured tripped and fell upon the floor injuring his arm, face and head. At first he resumed his work, but soon after was compelled to go home, where he was confined to his bed for an extended period, being partially paralyzed. There was no evidence to show that he was suffering from illness at the time of the fall. *Held*, That the verdict of the jury to the effect that the disability from which insured suffered was the result of the accident and not of disease, was sustained by the evidence.

*Zeitler v. National Casualty Company*  
(Minn. S. C.),  
124 Minn. 478; 145 N. W. Rep. 395;  
43 Ins. Law Jour. 522.

**Hip injured on train—Abscess on hip—Fistulous tract—Tubercular abscess.**

Insured claimed to have received an injury to his hip while on a train. As he stepped from the train he met his physician and told him of the injury and made an appointment for the following day. Upon calling at the physician's office a

soft place was found on his hip which was opened. Two days later an operation was performed at which time the abscess was curetted. Between the two examinations the soft place had enlarged from the size of a quarter to the size of a dollar and the operation developed that there was a fistulous tract about three inches long. The physician who performed the operation testified that the abscess was non-tubercular. A number of physicians testified for the company to the effect that it was of tubercular origin and could not have been formed within the time following the alleged injury. *Held*, that under this evidence it was a question for the jury whether the abscess was the result of disease or injury. The judgment in favor of the plaintiff below was affirmed against company.

*General Accident, Life & Fire Assurance Corporation v. Richardson* (Ky. C. A.),

157 Ky. 503; 163 S. W. Rep. 482; 44 Ins. Law Jour. 520.

**Fall—Body in region of heart injured—Ruptured left auricle of heart—Hardening of arteries—Arteriosclerosis.**

While going up the steps leading into his yard insured accidentally slipped and fell with force and violence, striking his body near the region of the heart upon a large stone with such force as to cause a rupture of the left auricle of his heart from which he immediately died. *Held*, that the

condition of insured's heart and other organs of his body may have more readily permitted a rupture from a fall, it not having been shown that death would have ensued at the time it did but for the fall, the jury were warranted in finding that the fall was the proximate cause of death.

The fact that a person of fifty or fifty-five years of age would be likely to have a normal hardening of the arteries in parts of the body which might tend to bring about a rupture of the heart in case of a violent accident of the kind which occurred in the instant case, is not sufficient to show that the accident was not the proximate cause of the death of the assured.

*Moon v. Order of United Commercial Travelers of America* (Neb. S. C.),  
96 Neb. 65; 146 N. W. Rep. 1037; 52  
L. R. A. (N. S.) 1203; Ann. Cas.  
1916-B, 222; 44 Ins. Law Jour. 81.

**Stubbed toe against chair—Broke bone—Gangrene developed, spreading over foot and leg—Amputation—Diabetes.**

Insured stubbed his toe against a chair breaking a bone after which gangrene developed, spreading over part of the foot and leg, making an operation imperative. Before the amputation, it was found that insured was suffering from diabetes. It was undisputed that the presence of diabetes required the operation to be delayed and that the gangrene was diabetic. The jury were instructed that if the injury was the cause of the

gangrenous condition there could be a recovery even though the diabetic condition contributed to the death. *Held*, that the instruction was erroneous. If the injury, concurring with pre-existing disease, had caused the death there was no liability under the accident policy, limiting disability or death resulting solely from accidental injury "independently of all other causes."

*Maryland Casualty Company v. Morrow*  
(U. S. C. C. A., 3rd Cir., Pennsylvania),

213 Fed. Rep. 599; 130 C. C. A. 179;  
52 L. R. A. (N. S.) 1213; 44 Ins. Law  
Jour. 301.

**Witnessing fire—Excitement—Shock—Ruptured blood vessel in brain—Apoplexy.**

Death from the bursting of a blood vessel in the brain, apoplexy, caused by insured's excitement and shock due to the witnessing of a fire in which a helpless man was burned to death, is the result of an accident, and not from disease, within the terms of an accident certificate.

*International Travelers Association v. Branum* (Texas C. C. A.),  
169 S. W. Rep. 389; 44 Ins. Law Jour.  
580.

**Inhalation of nasal douche—Germs drawn in middle ear—Spinal meningitis.**

A too violent inhalation of a nasal douche, by which germs were drawn into the middle ear,

whence they penetrated into the brain, resulting eventually in spinal meningitis and death, was not an accident within the meaning of the policy insuring against bodily injury effected through external, violent and accidental means.

*Smith v. Travelers' Insurance Company*  
(Mass. S. J. C.),  
219 Mass. 147; 106 N. E. Rep. 607;  
L. R. A. 1915-B, 872; 44 Ins. Law  
Jour. 695.

**Lifting—Hernia.**

Hernia caused by lifting is a "fortuitous event" within the meaning of Washington Workmen's Compensation Act, providing that the words "injury" and "injured", as therein used, refer only to such injuries as result from some "fortuitous event."

*Zappala v. Industrial Insurance Company* (Wash. S. C.),  
144 Pac. Rep. 54.

**Cramped position sawing board—Fell over—Ruptured artery.**

Insured on a hot day in a cramped position was sawing upward on a board. While in the act of doing this he fell over and died a few minutes afterward. His appearance suggested, according to the experts, who testified, that death was due to

a ruptured artery. *Held*, that this evidence was insufficient to show that death was due to accident.

*Wright v. Order of United Commercial Travelers of America* (St. Louis C. A.),  
188 Mo. App. 457; 174 S. W. Rep. 833;  
45 Ins. Law Jour. 765.

**Fall on wet bathroom floor—Face bruised, hemorrhage of nose, neck broken—Heart, lungs and brain diseased by intoxicants.**

Insured was found dead in the bathroom of a hotel in which he was living. A shower bath in the room was defective, and water leaking or thrown from same caused the floor to be very slick and wet. Insured was lying on his face and head, with the palm of one hand upon the floor, as it would probably have been had he attempted to catch himself to prevent falling. His face was bruised and he had bled through his nose more than a pint of blood. His neck was found broken. The bleeding indicated that the heart was beating after his fall. Insured had been a hard drinker, and there was evidence to the effect that his heart, lungs and brain had become diseased from the use of intoxicants. *Held*, that whether or not insured's death was due to accident or to heart failure produced by disease, under the evidence, was for the jury. Company held liable, as judgment was affirmed against it.

*Order of United Commercial Travelers of America v. Simpson* (Texas C. C. A.),  
177 S. W. Rep. 169; 46 Ins. Law Jour. 389.

**Kidneys diseased—Fall on sidewalk.**

Where an old man, large and heavy, and suffering from an incurable chronic affection of the kidneys, slipped and fell in a heap while endeavoring to step down from a sidewalk into the street, with the apparent intention of crossing the street diagonally, and death resulted in a few days thereafter, and there was no evidence that the insurer was not fully aware of the physical condition of the assured, the insurer is not necessarily relieved from liability upon its contract because the death may only have been accelerated by the fall; nor is the insurer relieved, even if the chronic malady from which the insured suffered may have contributed to cause the death; for, if the fall was the sole proximate cause of the death, it would be immaterial that the physical condition of the insured aggravated his injury or hastened his death.

*Hall v. General Accident Assurance Corporation, Limited,*

16 Ga. App. 66; 85 S. E. Rep. 600; 46  
Ins. Law Jour. 386.

**Operation for appendicitis—Vomiting and coughing burst stitches—Second operation for which anaesthetic was administered—Never recovered consciousness.**

Insured submitted to an operation for appendicitis and was progressing favorably when he suffered a spell of vomiting and coughing which bursted the stitches in the wound and caused it to

open so as to allow the intestines to protrude. To remedy this a further operation was performed but insured never recovered consciousness from the anaesthetic administered and died within the course of a few hours. *Held*, that if the condition necessitating the second operation could be considered as an accident it was not an accident causing bodily injury and resulting directly, independently and exclusively in death within the meaning of the policy. The death which followed was undeniably in some way contributed to, if not exclusively, by the disease with which insured was afflicted and the means taken for his relief.

*Stokely v. Fidelity and Casualty Company* (Ala. S. C.),  
193 Ala. 90; 69 So. Rep. 64; L. R. A. (1915-E) 955; 46 Ins. Law Jour. 501.

**Cut lip while shaving—Gash infected—Infection spread to face and neck.**

There being evidence to show that insured received a cut on his lip while shaving or being shaved; that it became infected and that the infection spread from the gash to his entire face and neck, and that death resulted from the infection, the question as to whether or not insured's death was due to external, violent and accidental means was for the jury, and judgment for plaintiff was affirmed against company.

*National Life and Accident Insurance Company v. Singleton* (Ala. S. C.),  
193 Ala. 84; 69 So. Rep. 80; 46 Ins. Law Jour. 535.

**Fall—Side, hip and region of heart injured—autopsy disclosed congestion and inflammation of pericardial sac, and slit or rupture of muscles of heart—Blood poisoning.**

If an accident causes blood poisoning either external or internal, and the blood poisoning causes death, the death results "directly from the accident."

Insured sustained a severe fall. From that time until his death a few days later he complained of pain in his left side. There was a black and blue spot in the region of the heart and one on the hip. Some time after his death an autopsy was performed at the instance of the plaintiff, at which time it was found that there was more or less congestion and inflammation all the way up to the pericardial sac. A small quantity of watery blood was found in the sac and on the surface of the left ventricle a slit or rupture of the muscles. A second autopsy was performed a few days later by representatives of defendant, whose physicians say that the cut into the heart muscles was over three inches long. There was no evidence tending to show that the heart wound may have been caused by the embalmer's trocar. The evidence was that this instrument had been inserted from the right side. *Held*, that under the evidence whether or not death of the insured was due to accidental causes was a question for the jury, and the judgment in favor of plaintiff below was affirmed against company.

*Thompson v. Columbian National Life Insurance Company,*  
114 Me. 1; 95 Atl. Rep. 229.

**Fall—Hernia.**

Where hernia was produced by fall, and the policy excepted disability "as the result of, or in consequence of hernia," it was *Held* that the clause had reference to hernia as the accidental cause of the disability; it did not relieve the insurer from liability where the hernia was a consequence of an active cause. That the exception was open to two constructions, viz.: That it excluded liability for death or disability caused directly or indirectly by hernia which might arise from internal causes; and that it exempted insurer from liability when the hernia was a consequence of external causes due to accident. Being open to two constructions, the first being more favorable to the assured should be adopted.

*Berry v. United Commercial Travelers  
of America* (Iowa S. C.),  
172 Iowa 429; 154 N. W. Rep. 598;  
L. R. A. 1916-B, 617; Ann. Cas.  
1918-A, 706; 47 Ins. Law Jour. 101.

**Strain—Accidental.**

The policy provided that if the assured should be disabled "by rheumatism, tuberculosis, \* \* \* strains, \* \* \* then the company will pay the assured \$50 per month," etc. *Held*, that this provision for indemnity had no application to an injury causing the death of assured, and the company in event of death arising from an accidental

strain was liable for the principal sum named in the policy.

*Massachusetts Bonding & Insurance Company v. Duncan* (Ky. C. A.),  
166 Ky. 515; 179 S. W. Rep. 472; 47  
Ins. Law Jour. 108.

**Cold plunge bath—Shock—Dilation of heart.**

Dilation of the heart, caused by taking a cold plunge bath, is properly characterized as effected by accidental means, especially since insured was an apparently healthy and vigorous man of military activities, accustomed to such baths, and had never previously experienced any bad effects therefrom.

*New Amsterdam Casualty Company v. Johnson* (Ohio App.),  
1 Ohio App. 22; 34 Ohio Cir. Ct. Rep.  
76.

Reversed, as follows:

Where an insured holding an accident policy indemnifying him against bodily injuries which, independent of all other causes, are effected solely and exclusively by external, violent and accidental means, suffers an injury due to dilation of the heart following the voluntary taking of a cold-water bath, it will not be considered as the result of an accident, where, under the circumstances attending the dilation, there is no evidence that anything occurred which the insured had not

planned or anticipated, excepting the dilation and its consequences.

*New Amsterdam Casualty Company v. Johnson, Admx.,*

91 Ohio St. 155; 60 Bull. Supp. 136;  
L. R. A., 1915-D, 358; L. R. A.,  
1916-B, 1018; 110 N. E. Rep. 475; 47  
Ins. Law Jour. 220.

**Fall—Side injured—Surgical operation—Appendicitis  
—Peritonitis.**

In an action on a policy of accident insurance the company in its affidavit of defense alleged that death resulted from peritonitis several months after an alleged accident, and that the peritonitis did not result from the injury complained of. *Held*, that peritonitis is not an injury, but a disease. While it may be caused by an injury, it may come from other causes, and it being denied in the affidavit of defense that it was caused by the alleged injury the affidavit of defense was sufficient. The rule for judgment for want of sufficient affidavit of defense is discharged.

*Jones v. Commonwealth Casualty Company (Allegheny Co. C. P.),*  
63 Pittsburgh Legal Jour. 729.

See following:

Insured accidentally slipped and injured his left side. Two days later he was again injured on the same side by a second fall. Immediately following the accident he complained of pain and

was unable to take food. Some three weeks after the accident, owing to inability of physicians to determine the exact cause of his suffering, an exploratory operation was performed and a thorough examination made without discovering the existence of abnormal conditions at the time except a small fibrous band attached to the peritoneum at one end and the descending colon at the other. This band was severed and an incision made on the right side and the appendix, which was found to be in a chronic condition, removed. No evidence of peritonitis was discovered at the time. That disease, however, developed 24 hours later and the patient died therefrom the following day. A post mortem showed inflammation to be localized on the left side at the point where the fibrous band was discovered, which was also the point where the deceased was injured when he sustained the fall. *Held*, that the evidence was sufficient to take the case to the jury on the question of whether or not the peritonitis was the result of the injury complained of.

Even if the peritonitis was due to the operation, the operation having been made necessary by the injury, the injury is to be considered as the proximate cause of the resulting death.

*Jones v. Commonwealth Casualty Company* (Pa. S. C.),

225 Pa. 566; 100 Atl. Rep. 400; 49 Ins. Law Jour. 837.

**Fatty degeneration of heart.**

Death from fatty degeneration of the heart is not due to "external, violent and accidental means."

*Martin v. Illinois Commercial Men's Association* (Ill. App.),  
195 Ill. App. 421; 51 Nat'l Corp'n Rep.  
737.

**Fall—Stomach injured—Hemorrhage from peritoneal cavity—Hemorrhage from cancer—Cancer.**

The policy insured against death "from bodily injuries effected directly and independently of all other causes through external, violent and accidental means." Insured's death was immediately caused by a hemorrhage. The plaintiff claims that it was caused by an accidental injury previously received, while the company claims that it was of cancerous origin. One month preceding her death insured fell through a trap door into a cellar. An autopsy was performed. Two physicians testifying for the company stated that the hemorrhage came from cancer. On behalf of plaintiff there was testimony that it came from the lesser peritoneal cavity through a perforation of the posterior wall of the stomach, not within the cancerous area, and, in the opinion of the physician so testifying had come from the injury. While at the hospital following the accident insured had peritoneal trouble and subsequently while in the hospital suffered from same and vomited. *Held*, that the evidence justified a find-

ing by the jury that the hemorrhage came as the result of an injury, and that it was error for the Court to grant a motion for judgment notwithstanding the verdict.

*Ashelby v. Travelers' Insurance Company* (Minn. S. C.),  
131 Minn. 144; 154 N. W. Rep. 946; 47  
Ins. Law Jour. 212.

**Freezing.**

Disability due to freezing is not in itself the result of an accident.

*Lenarick v. National Casualty Company*,  
(St. Louis Co., Minn., Dist. Ct.),  
45 Ins. Law Jour. 71.

**Fall—Head wounded—Meningitis—Cerebro spinal meningitis.**

On hearing a fall in the bathroom insured's wife opened the door and found her husband lying on the floor with blood streaming from a wound in his head. She exclaimed: "What's the matter," and he replied: "I slipped and fell." A physician testified that in his opinion the fall caused the insured's death. An autopsy was held and a bruised and torn wound found on a tender part of the head just above and a little back of the ear on the left side. There was other evidence to the effect that previous to the fall insured had been enjoying good health.

It was the contention of the company that insured's death was due to meningitis and that

this is what produced the fall. There was expert testimony that the germs causing meningitis are generally supposed to enter through the nose and throat. There was testimony, however, that they could enter through an abrasion of the skin. *Held*, that whether or not the death of insured was due to meningitis or whether the germs entered his body through the abrasion caused by the fall, under the evidence, was for the jury.

Where an accident causes a disease which disease in turn results in death the accident is, in law, the proximate cause of the death, and the insurer is liable notwithstanding the policy limits liability to "the effects of bodily injuries" caused directly, solely, and independently of all other causes by accidental means, which bodily injuries or their effects shall not be caused wholly or in part directly or indirectly, by any disease, defect or infirmity. Death resulted from the fall which produced cerebro-spinal menigitis.

*Greenlee v. Kansas City Casualty Company* (Kansas City C. A.),  
192 Mo. App. 303; 182 S. W. Rep. 138;  
47 Ins. Law Jour. 426.

**Weakened condition—Raised hand suddenly—Blood pressure strong—Blood rupture of retina—Sight destroyed.**

Insured, while in a weakened condition resulting from the taking of a purgative, raised his hand suddenly to get a paper; his blood pressure was strong, and, as a result of his act, and weakened condition, rushed to his head, causing a

blood rupture of the retina thereby destroying his sight. *Held*, that the loss was not due to accidental means. The weakened condition due to the purgative was not accidental nor was the excessive blood pressure; the movement of the hand was an ordinary movement and exactly as intended. The rushing of the blood with the excessive pressure rupturing the retina was, therefore, caused by natural causes.

*Stone v. Fidelity Casualty Company of New York* (Tenn. S. C.),  
133 Tenn. 672; 182 S. W. Rep. 252;  
L. R. A. (1916-D), 536; Ann. Cas.  
(1917-A), 86; 47 Ins. Law Jour. 296.

**Slipped—Strained groin—Rupture—Ulcer or abscess—Cancer.**

Insured was a commercial traveler. While at the time of the alleged accident he was emaciated there was evidence to the effect that he had been enjoying good health. On July 14, while packing his samples, so he stated to the company in a notice, he slipped and strained himself. On that day he called on a physician who testified to finding marks of injury in the region of the left groin, and that the insured at that time was suffering from a rupture. It was the theory of the plaintiff that insured died of an ulcer or abscess which was caused by the injury which he received at the time he slipped. It was the theory of the defendant that he died of a cancer or ulcer or abscess in the prostatic gland, which had been infiltrated by a cancer and which had existed at the time of the

alleged accident. There was medical testimony tending to support each of the two theories. *Held*, that under the evidence it was a question for the jury as to whether or not death resulted from an accident.

The policy provided: "The insurance under this contract shall not extend to \* \* \* death resulting from or caused directly or indirectly, wholly or in part, by \* \* \* disease in any form, or while afflicted thereby." The jury were instructed that this clause had no reference to any disease existing at the time of accident which did not cause directly or indirectly, or in some way contribute to the death. *Held*, that this was a proper interpretation of the condition. (Judgment affirmed against company.)

*Skinner v. Commercial Travelers' Mutual Accident Association* (Mich. S. C.),

190 Mich. 353; 157 N. W. Rep. 105; 47 Ins. Law Jour. 723.

**Fall—Apoplexy—Paralysis—Arterio sclerosis and Bright's disease.**

The policy provided that in case of paralysis due to accidental injuries "independently and exclusively" of all other causes, the company would pay the principal sum. At the time insured fell, while attempting to board a moving street car, he was afflicted with the disease of arterio sclerosis and Bright's disease. *Held*, that under the terms of the policy the insured was not entitled to recover unless the paralysis was

caused solely by the injuries received by him; that is, apart from and without regard to any disease with which he was afflicted at the time of the accident; therefore, an instruction of the trial court that if "the fall hastened the paralysis and caused it to result sooner than it would have resulted had the fall not have happened," the accident would have been the independent and exclusive cause of the paralysis, was proper.

There being evidence tending to show that the disease with which insured was afflicted caused a stroke of apoplexy and resulted in paralysis, the insurer was entitled to have that specific issue submitted to the jury.

In such case if the disease with which insured was afflicted caused a stroke of apoplexy, or if the injury was received by the insured in the fall and said diseases concurred and co-operated in causing apoplexy and paralysis, there was no liability on the part of the insurer.

The judgment for plaintiff below was reversed in favor of the company.

*Western Indemnity Company et al. v.  
Mackechnie (Texas C. C. A.),  
185 S. W. Rep. 615; 48 Ins. Law Jour.  
141.*

**Fall—Concussion of brain—Heart disease.**

A hackman swears that the deceased, in getting out of his hack, fell upon his back and head, and seemed dazed. Upon entering his house, his wife, the plaintiff, says he was dazed, and complained of injury at the back of his head, and apparently

suffered from the injury. Plaintiff's expert evidence tends to show that death resulted from concussion of the brain. The defendant's evidence is to the contrary, and indicates that it resulted from a diseased heart, and that the deceased had other diseases which might well have caused his death. *Held*, that the verdict of the jury in favor of the plaintiff was sustained by the evidence.

*Tromblee v. North American Accident Insurance Company* (N. Y. App. Div.),

158 N. Y. Supp. 1014; 173 App. Div. 174; 48 Ins. Law Jour. 134.

**Hand bruised—Embolus from bruised hand passed to base of brain.**

It was alleged in the complaint that the insured sustained an injury to his hand, which injury caused an embolus on the base of the brain, from which he died. The verdict was against the insurer. It is contended that the evidence does not sustain the verdict because the physician testifying for the plaintiff stated that the embolus in passing from the bruised portion of the hand to its place of lodgment in the brain would necessarily pass through the minute capillaries in the lungs; that the physicians described the embolus as being larger than the capillaries through which they said it passed; therefore it is argued that their conclusions were incorrect and physically impossible. *Held*, that the evidence showing that

this embolus was a pus formation and not a solid, it was for the jury to say whether or not it was beyond a physical impossibility for this small semi-liquid substance loose in the blood vessels to be driven through the minute capillaries of the lungs to its place of lodgment.

*Standard Accident Insurance Company  
v. Broom* (Miss. S. C.),  
71 So. Rep. 653; 48 Ins. Law Jour. 137.

**Fall—Rupture—Surgical operation—Pre-disposition to  
rupture.**

Insured died from the effects of an operation to reduce a rupture. The rupture had been caused by a fall, although he, at the time, had a predisposition to rupture. The policy insured against "loss of life, limb, sight and time, resulting from bodily injuries \* \* \* effected directly and independently of all other causes through accidental means. *Held*, that his predisposition to rupture was not a cause of the accident, and the fact that he was so predisposed would not prevent recovery.

In case where a surgical operation becomes necessary to deal properly with the effects of an injury and the assured dies as a result of the operation, death results "independently of all other causes" from such injuries.

*Collins v. Casualty Company of America*  
(Mass. S. J. C.),  
224 Mass. 327; 112 N. E. Rep. 634;  
L. R. A. (1916-E) 1203; 48 Ins. Law  
Jour. 122.

**Abdomen injured—Surgical operation—Appendix removed—Traumatic peritonitis or inflammation of the peritoneum.**

The policy provided for the payment of a principal sum "if death shall result from such injuries alone, and not approximately from some disease induced or aggravated by said injuries." Insured was injured by the over-turning of an automobile. He was taken to a hospital and an abdominal operation performed, the appendix being removed and the intestines replaced in a normal position; following the operation there was a progressive obstruction of the intestines. A second operation was performed, following which insured died. Three physicians testified that death was caused solely by the injuries received in the accident. The insurer claimed that the death resulted approximately from a disease, namely, traumatic peritonitis, induced by the injury. *Held*, that the evidence warranted the jury in finding that the death of the insured resulted from his injuries alone and not approximately from a disease induced or aggravated by such injuries.

As a result of the accident the insured suffered from traumatic peritonitis, or an inflammation of the peritoneum, caused by a blow on the abdomen. *Held*, that his death was not proximately caused by a disease within the meaning of the policy.

*Hickey v. Ministers' Casualty Union*  
(Minn. S. C.),

133 Minn. 215; 158 N. W. Rep. 45; 48  
Ins. Law Jour. 243.

**Foot injured—Abrasion from new shoes—Erysipelas—  
Smallpox sores.**

Insured had suffered from smallpox and had been sent to the detention station. His case was a very mild one. While at the detention station he put on a comparatively new pair of shoes and took a walk. A number of hours after returning he complained of a smarting sensation on his right foot. It was later found that he was suffering from erysipelas from which he died. His roommate in the detention station testified as to having seen a reddish place near the ankle. He testified that it "looked" like it had been rubbed and that it "looked" to him like erysipelas. There was testimony that erysipelas could be contracted only by entrance of the germ through an abrasion or break in the skin; that it was possible for the germ to enter through the sores caused by smallpox, and that it was common for erysipelas to follow smallpox. The insured, when he complained of his foot hurting him, said nothing about his shoe having rubbed his foot, nor was there any evidence tending to prove that the assured ever had a tight shoe on his foot or that the shoe, tight or otherwise, rubbed his foot. *Held*, that while proof of an accident might be made by circumstantial evidence, the facts produced in this case were insufficient to show that the erysipelas germ entered the body through an injury caused

by external, violent and accidental means within the terms of the policy.

*General Accident, Fire & Life Assurance Corporation v. Murray* (Va. S. C. A.),  
90 S. E. Rep. 620; 49 Ins. Law Jour. 98.

**Mushrooms eaten—Ptomaine poisoning.**

The policy insured "against loss resulting directly and independently of any and all other causes from bodily injury effected solely through external, violent and accidental means." It excepted liability "for injury resulting from or contributed to, directly or indirectly, wholly or partially, by disease." Insured's death was caused solely by ptomaine poisoning following the eating of some mushrooms. *Held*, that death resulted from accidental means and is not within the exception of death due to disease.

While a mere accidental result would not suffice, under the language of the policy, the unintentional taking of a poisonous substance contained in what insured supposed to be edible mushrooms constituted an accidental means within the meaning of the policy.

*United States Casualty Company v. Griffis* (Ind. S. C.),  
114 N. E. Rep. 83; 49 Ins. Law Jour. 70; 83 L. R. A. (1917-F), 481.

**Infected by germs of pyorrhea—Septic poisoning.**

The policy covered "septic poisoning, the result of external inoculation from accidental contact

with septic matter.’’ The insured was a dentist. For some two weeks he had suffered from a cold and its attendant inflammation of the nasal mucous membrane, but the cold and inflammation had almost disappeared at the time of his alleged infection. He was working on the teeth of a patient who was suffering from an attack of pyorrhea, when the patient coughed, ejecting a spray of saliva into the doctor’s face. The next day he complained of a headache and pain just above his nose. His suffering continued to increase. The insured subsequently died. A specimen of the bloody thick pus which exuded from his nose was examined and found to contain germs always present in the pus of pyorrhea. There was expert opinion to the effect that the death was due to a septic inoculation from the pyorrhea pus. *Held*, that under this evidence it was a question for the jury as to whether or not death was due to causes insured against. The judgment for plaintiff was affirmed against company.

*Merrick v. Travelers' Insurance Company* (Kansas City C. A.),

189 S. W. Rep. 392; 49 Ins. Law Jour. 103.

#### **Fall—Coronary sclerosis.**

The policy insured against death resulting “wholly and entirely by external, violent and accidental means.” The proofs of death showed that the insured suffered a fall and that the cause of death was coronary sclerosis. *Held*, that these

positive statements in the proofs of death controlled the inference of the cause of death naturally arising from the mere fact of fall and of physical injury, and made it impossible to say as a matter of fact that the directors as reasonable men acting reasonably, ought to have decided that death was due wholly and entirely to an accident.

*Page v. Commercial Travelers Eastern Accident Association* (Mass. S. J. C.),  
225 Mass. 335; 114 N. E. Rep. 430; 49 Ins. Law Jour. 231.

**Fall—Breast struck—Hemorrhage—Enlargement of heart and degeneration of blood vessels and arteries—Angina pectoris.**

Insured's wife who was with him at the time of the alleged accident testified to the effect that the insured was engaged in attempting to fasten a board on a small box; that in so doing he used a ratchet screwdriver; having laid the board on the box and placed a screw in position, insured adjusted the tool for the purpose of driving it into the board and while bending over it to bring his weight upon the tool the box tipped, causing him to fall forward with his whole weight upon the upper end of the tool which struck him in the breast. After he fell he could not get his breath and struggled just like he was dying. He continued to suffer and died within a few hours. An autopsy was performed which showed enlargement of the heart and degeneration of the blood

vessels and arteries. The immediate cause of death was hemorrhage into the wall of the arch of the aorta, the diagnosis of cause of death being angina pectoris. Several experts testified to the effect that the abnormal conditions of the heart and blood vessels were of a character rendering the insured liable to sudden death as the result of any slight cause or mere ordinary exertion, or even in sleep without any external cause. There was expert testimony on behalf of the plaintiff in rebuttal that the condition of the heart and blood vessels was not such as to produce death in itself and that in his opinion the death was due to the blow received in the fall. *Held*, that under this evidence it was a question for the jury as to whether the cause of death was within the terms of the policy, "Through accidental means and resulting directly, independently and exclusively of all other causes." Judgment affirmed against company.

*Hanley v. Fidelity & Casualty Company*  
(Iowa S. C.),

161 N. W. Rep. 114; 49 Ins. Law Jour.  
350.

*Hatfield v. Iowa State Traveling Men's  
Association,*

161 N. W. Rep. 114; 49 Ins. Law Jour.  
367.

*Hatfield v. Travelers' Protective Associa-  
tion,*

161 N. W. Rep. 125.

**Hernia result of accident—Hernal protrusion previously.**

It was contended by the company that insured was suffering from a hernia preceding the accident which caused his death. There was evidence to the effect that about a year preceding his death a small protrusion the size of a hazelnut was noticed at his navel. It was shown that this was very small and never increased in size and never gave the insured any trouble. There was medical testimony to the effect that it could have been simply a development of external parts without any hernial protrusion. *Held*, that this evidence was sufficient to sustain the findings of the jury that at the time of the accident, which resulted in insured's death, he was not suffering from hernia.

Judgment for plaintiff below for less than demanded—policy limited amount payable to  $\frac{1}{4}$  "where accidental injury results in hernia," and same affirmed.

*Keen v. Continental Casualty Company*  
(Iowa S. C.),  
175 Iowa 513; 154 N. W. Rep. 409.

**Fall—Bruises on temple and at end of spinal column—Paralysis—Pneumonia.**

According to the evidence of several witnesses who saw insured after the accident there were numerous bruises upon his body. Previous to his fall he had been in excellent health. One physician testified that there was a bruise on the temple, which indicated a blood clot, and a severe

bruise at the lower end of the spinal column. The physicians testified that the paralysis with which insured was afflicted, and the pneumonia, could have been produced by injuries sustained by him in the accident. *Held*, that the verdict of the jury in favor of the plaintiff was warranted. In other words, this evidence sustained the conclusion that the accident and consequent injuries resulted in and constituted the proximate cause of death.

*National Life & Accident Insurance Company v. Cox* (Ky. C. A.),

174 Ky. 683; 192 S. W. Rep. 636; 49 Ins. Law Jour. 608.

**Blow on chest—Aneurism of the aorta—Dilation of heart and arterio sclerosis—Syphilis.**

It was the contention of the company that the insured died of acute dilation of the heart and arterio sclerosis primarily caused by syphilis. The physician who treated insured during the last four months of his life so testified. On the other hand there was evidence that insured did not have syphilis and did not die of arterio sclerosis, but on the contrary died from an aneurism of the aorta caused by a blow received on the chest about 18 months preceding his death. Before that time he was a stout, active, energetic man with no disease; that immediately after, the aneurism developed and grew; that he had a cough which caused an injury to the aorta which developed at the place the breast was bruised by the blow. *Held*, that under this evidence it was a question for the jury as to what caused the insured's death, and the

Court, therefore, did not commit error in refusing to direct a verdict for the company. Judgment affirmed against company.

*North American Accident Insurance Company v. Miller* (Texas C. C. A.),  
193 S. W. Rep. 750; 49 Ins. Law Jour.  
841.

**Slipped on icy ground—Twisted body—Abdomen injured—Surgical operation—Adhesions of bowels, etc.—Operation previously.**

The insured slipped in walking on a steep and icy ground and almost fell; in righting himself he twisted his body in the region of the abdomen; after this twisting he suffered severe pain in the abdomen; an operation was performed and it was discovered that there were adhesions of his bowels to the wall of the abdominal cavity. It further appeared that the insured was disabled for a number of months after the operation so performed. Several physicians testified that the condition was caused by the twisting of his body when he accidentally slipped and almost fell. The company offered evidence to the effect that the condition was the result of a previous operation. *Held*, that whether or not the condition resulted from injuries effected solely through accidental means independently of all other causes was a question for the jury, and that the evidence sustained its verdict in favor of the insured.

*Kelley v. Pittsburgh Casualty Company*  
(Pa. S. C.),  
100 Atl. Rep. 494; 49 Ins. Law Jour.  
828.

**Fall—Apoplexy or paralysis—Ill health.**

In an action on an accident policy, evidence showing that decedent on returning to his home in the evening fell at or near the top of the steps leading to the porch, that ice had formed on the steps, that on being assisted into the house, he told his wife he slipped on the steps, and that he also stated to the doctor that he had fallen on the steps, was sufficient to warrant submitting the case to the jury on the plaintiff's theory that death was accidental, though there was no medical testimony to show that fact; and though it appeared that death was due to apoplexy or paralysis due to the fall, it could not be said as a matter of law that death did not result from the fall from the mere fact that there was evidence that decedent had not been in good health, but which failed to show any predisposition to apoplexy or paralysis.

*Semmons v. National Travelers' Benefit Association* (Iowa S. C.),

163 N. W. Rep. 338; 50 Ins. Law Jour.  
379.

**Accident—Tubercular lesions—Tubercular trouble previously.**

About ten or fifteen years before the date of the policy the insured had suffered from a tubercular affection. The tubercular lesions, however, had healed and would have remained harmless had it not been for the accident. The accident caused the tubercular condition to flare up again and delayed the recovery. *Held*, that under these circumstances the development resulted "directly,

independently and exclusively of all other causes" from the accident.

*Fidelity & Casualty Company v. Mitchell*  
(Eng. Privy Council),  
(1917) A. C.; The Law Reports (Nov.,  
1917) 592.

**Lifting cotton bales—Heart ruptured.**

Where insured while lifting cotton bales died of rupture of the heart caused thereby, and it appeared that he was in apparent good health and had no knowledge of any heart trouble, that he was accustomed to the work and had not before that time suffered any harmful results therefrom, and that he did not anticipate any injury from lifting the cotton bales at the time and in the manner he did, his death was accidental; but it was not a death "by accidental means," if his act in lifting the cotton bales was just what he intended, and was done in the manner in which he intended.

Death by accidental means occurs where death is caused by some act of deceased not designated or intentionally done by him, while if the death is not designed or anticipated by deceased, but is the consequence of an act voluntarily done by him, it is an accidental death. (Judgment in favor of society, reversed in favor of beneficiary.)

*Pledger v. Business Men's Accident Association of Texas* (Texas C. C. A.),

197 S. W. Rep. 889; 51 Ins. Law Jour. 81.

Reversed, as follows:

The policy insured against "accidental death." It declared that liability to pay should be subject to "all of the limitations of the by-laws." One of these limitations was that death must be produced by accidental means. *Held*, that this limitation did not contradict the agreement contained in the policy to pay in the event of accidental death but limits the same to a certain character of accidental death, viz.: that produced by accidental means. A death produced by accidental means is an accidental death. An accidental death may or may not be produced by accidental means.

*Pledger v. Business Men's Accident Association* (Texas C. C. A.),  
198 S. W. Rep. 810; 51 Ins. Law Jour.  
81.

Reversed, as follows:

Under application, certificate, and by-laws providing for payment of \$5,000 for the death of a member caused "solely and exclusively by external, violent and accidental means," *Held*, that the beneficiary was entitled to recover for accidental death, member dying from a rupture of heart vessels at the time of lifting a cotton bale, in view of Rev. St. 1911, Art. 4807, although the policy provided that there would be no liability for death resulting from any accident when no visible mark was on the body.

*Pledger v. Business Men's Accident Association of Texas* (Texas Com. App.),  
228 S. W. Rep. 110.

**Fractured skull—Shock—Unconsciousness—Skull had previously been trepanned.**

The company insisted that the unconscious condition of the assured following the fracture of his head was due, not to such injury, but to an operation previously performed in which the skull was trepanned. Such was the opinion of its medical witness. As against this testimony the insured testified that since the operation he had never experienced any ill effects therefrom; his fellow employes testified that during such interval he appeared at all times to be in normal condition. *Held*, that under this evidence the Court was justified in concluding that the unconscious condition following the fracture of his head was attributable to the shock and suffering which it entailed rather than to the previous operation.

*Church v. Fidelity & Deposit Company of Maryland* (Cal. D. C. A.),  
168 Pac. Rep. 1054; 51 Ins. Law Jour.  
157.

**Injury—Blood poisoning—Cut finger on broken bottle.**

Where an accident insurance policy indemnifies against loss caused directly and exclusively by bodily injury sustained solely and independently of all other causes through accidental means, and provides that blood poisoning resulting directly and exclusively from such injury shall be deemed a bodily injury, it is wholly immaterial when or how the specific bacilli which caused the blood

poisoning resulting in the death of the insured were introduced into the wound.

*Rich v. Hartford Accident & Indemnity Company* (Ill. App.),  
12 Ill. Law Review, App. Ct. Dig. 101.

**Blood poisoning—Septicaemia—Sickness or accident.**

The policy covered losses sustained from both accidental injuries and from disease. It provided that “any loss resulting wholly or in part, directly or indirectly from \* \* \* blood poisoning or septicaemia \* \* \* shall be considered as resulting from sickness” for which stipulated benefits were provided. After insured was injured septicaemia intervened and he died therefrom within six weeks after receiving the alleged injuries. *Held*, that the death having been so caused the company was liable only for the limited benefits provided for disability from sickness, and was not liable as for loss of life from accident.

*Anderson v. Great Eastern Casualty Company* (Utah S. C.),  
168 Pac. Rep. 966; 51 Ins. Law Jour.  
162.

**Intentional lifting—Exertion—Embolus—Loss of Sight.**

A disability due to an intentional exertion does not constitute an “accidental means,” hence a loss of sight from a blood clot, embolus, due to general physical condition of insured, but possibly

aggravated by an intentional lifting, was not covered.

*Salinger v. Fidelity & Casualty Company of New York* (Ky. C. A.),  
198 S. W. Rep. 1163; 51 Ins. Law Jour.  
133.

**Fall—Hernia.**

A provision in a casualty insurance policy to the effect that the insurance does not cover loss from hernia is not applicable where the insured received an injury by falling, from which the hernia resulted.

*Schwindermann v. Great Eastern Casualty Company* (N. D. S. C.),  
165 N. W. Rep. 982; 51 Ins. Law Jour.  
319.

**Ingrowing hairs, removal of—Jabbed tweezers into skin—Infection.**

The contract insuring against disability through "accidental, violent and external means," there could be no recovery for disability resulting from an act of a barber in removing ingrowing hairs from the insured's chin although the work was unsuccessfully done and the result was not such as either the insured or the barber anticipated; the means must have been accidental to entitle the insured to recover.

Insured testified that a barber undertook to remove dead hairs from his chin and that while so doing the barber got into an altercation with

another just as he made an attempt to get the hair and he looked up and jabbed the tweezers into the skin. *Held*, that whether or not the disability resulting therefrom was due to accidental means was a question for the jury.

*Kendall v. Travelers' Protective Association of America* (Ore. S. C.),  
87 Ore. 179; 169 Pac. Rep. 751; 51 Ins.  
Law Jour. 319.

**Scrapped scab off boil on neck—Erysipelas.**

Insured had a boil on the back of his neck for which he had been treated by a doctor. A healthy scab had formed. While pursuing his occupation of butcher and while his hands were soiled his neck began to itch, and in order to relieve the irritation he rubbed or scratched the offending place, with the result that he broke the scab. Erysipelas followed, causing death. *Held*, that under this evidence the death was not the result of accidental means.

*Maryland Casualty Company v. Spitz*  
(U. S. C. C. A., 3rd Cir.),  
246 Fed. Rep. 817; 51 Ins. Law Jour.  
409.

**Fall striking breast against heavy iron—Pneumonia.**

The policy insured against death caused solely and exclusively by external, violent and accidental means. The evidence showed that while insured, with some others, was lifting a heavy piece of iron, one of the men fell, causing the iron to fall

to the ground and deceased fell upon it, striking his breast against it. He died about a month later of pneumonia, which the beneficiary claims was caused by striking his breast. The doctor who attended him testified that he could not state positively that the injury caused pneumonia. *Held*, that death was not caused solely and exclusively by external, violent and accidental means.

*Stull v. United States Health & Accident Insurance Company* (Ky. C. A.),  
115 S. W. Rep. 234; 38 Ins. Law Jour.  
391.

**Lifting heavy cylinder from engine—Ruptured blood vessel in stomach.**

The rupture of a blood vessel in the stomach of insured, from which death ensued, caused by a sudden wrench of the body sustained in removing a heavy cylinder head from an engine, where insured was a strong and healthy man, engaged as a machinist, in which business he was engaged when the policy was issued, is such a death as will sustain an action on a policy insuring against death resulting from injuries sustained solely by external, violent and accidental means.

*Standard Life and Accident Insurance Company v. Schmaltz* (Ark. S. C.),  
66 Ark. 588; 53 S. W. Rep. 49; 74 Am.  
St. Rep. 412.

**Slipped while taking tire from automobile—Blood clot  
—Overexertion—Arterio sclerosis.**

The policy insured against death from external, violent and accidental means. It excepted death caused by voluntary overexertion. Insured undertook to take off the casing of an automobile wheel. He worked with it for some time and finally it came off with a snap, and with such suddenness that insured, to preserve his equilibrium, staggered back several paces. He immediately turned pale and complained of being ill. He was taken to a hospital and died about an hour later. The immediate cause of death was due to a blood clot near the heart. *Held*, that insured's death was not due to accident. An accident means a result, the inducing cause of which is not brought in motion by voluntary and intentional act of the injured person. The means or cause must be accidental. Where death results from voluntary physical exertion or intentional acts on the part of the insured, it is not accidental. Judgment affirmed in favor of company.

*Lickleider v. Iowa State Traveling Men's Association* (Iowa S. C.),  
151 N. W. Rep. 479; 45 Ins. Law Jour.  
772.

Reversed as follows:

With the facts as above, and the post-mortem showed death due to blood clot in the right coronary artery. Two of the operating physicians gave it as their opinion that death was due to arterio

sclerosis. The third testified that he found no more arterio sclerosis than was usual with a man of insured's size and age, and that in his opinion the blood clot was due to inflammation or injury to the artery; that he did not observe or find any inflammation in the body. *Held*, that the Court could not rule as a matter of law that death was the result of disease or other natural causes.

If the arteries of the insured were sclerotic by the sclerosis was such only as is natural and usual impairment of increasing years, the fact that a bodily injury sustained by him would more likely be fatal than would be the case if such condition did not exist, would not prevent a recovery, should it otherwise appear that the injury was of the nature described in the policy.

Insured having undertaken to remove a tire and having exercised his strength with a considerable degree of violence in the doing of which the tire gave way with an unexpected suddenness, causing him to stagger or fall back from the stooped or strained position he was occupying, it was open to the jury to find if in this involuntary and undesigned movement so unexpectedly produced he sustained the strain or injury to some of his vital organs which proved fatal. A death so produced would be accidental both in cause and in effect.

*Lickleider v. Iowa State Traveling Men's Association* (Iowa S. C.),

166 N. W. Rep. 363; 51 Ins. Law Jour.  
435.

Petition for rehearing overruled, see following:  
*Held*, that if the insured in pulling the tire from

the wheel, slipped as might be found from the testimony, and fell in consequence thereof, the jury might have concluded not only that the injury was accidental but that it was due to accidental means. For this reason the trial court erred in directing a verdict for the association.

*Lickleider v. Iowa State Traveling Men's Association* (Iowa S. C.),  
168 N. W. Rep. 884; 52 Ins. Law Jour.  
668.

**Pricked pimple with pin—Infection.**

The intentional pricking of a pimple by the insured with his tie pin, which was infected, by reason of which he became infected with poison and died within a few days, constituted death from bodily injuries "through external, violent and accidental means" within the terms of the policy. That where the germs entered the wound in its making the association was not relieved of liability.

*Lewis v. Iowa State Traveling Men's Association* (U. S. D. C., Iowa),  
248 Fed. Rep. 602; 52 Ins. Law Jour.  
141.

Affirmed, as follows:

*Held*, Such death to be the result of receiving a bodily injury through external, violent and accidental means, as provided in the policy; and that the wound was an open wound within the terms of the policy exempting the insurer from liability for local or general infection, except when such

infection should result from a visible or open wound caused by external, violent and accidental means.

*Iowa State Traveling Men's Association v. Lewis* (U. S. C. C. A., 8th Cir.), 257 Fed. Rep. 552; 54 Ins. Law Jour. 460.

**Pricked pimple on lip—Infection—Inflammation of brain—*Staphylococcus aureus*—Infection.**

Insured had a pimple on his lip. It became larger and more inflamed. A physician who was consulted testified that there was a punctured wound in the lip which had inflamed and infected the deep tissues. The infection spread, death finally resulting. *Held*, that the evidence was such that the jury might find that the pimple had been punctured by some instrument and that the result of the puncture was an infection which caused death. If that is what happened, there was an accident.

In an action on an accident policy, where the assured had punctured pimple on his lip, whereby infection was induced, resulting in death from inflammation of the brain produced by *staphylococcus aureus*, the infection was the result of accident.

*Lewis v. Ocean Accident & Guarantee Corporation, Limited* (N. Y. Ct. of App.),

224 N. Y. 18; 120 N. E. Rep. 56; 7 L. R. A. 1129; 52 Ins. Law Jour. 397;

Reversing: 167 N. Y. S. 1110; 180 App. Div. 935 (no opinion), which affirmed judgment of trial court.

**Pimple pricked with pin—Lip became infected—Infection.**

It was stipulated by the parties as follows: "That upon discovering said pimple, while alone and in the absence of any eye-witness, (insured) removed his gold scarf pin from his necktie and intentionally pricked said pimple with said scarf pin; that his lip at said place immediately became infected." *Held*, that the stipulation is to be construed as meaning that the scarf pin itself carried the infection, and as there was no evidence that the insured knew this fact nor could be presumed to know it, the use of the pin that was infected was an accidental means causing death.

*Interstate Business Men's Association v. Lewis* (U. S. C. C. A., 8th Cir.),  
257 Fed. Rep. 241; 54 Ins. Law Jour.  
341.

**Blow—Nephritis—Inflammation of kidneys.**

The evidence tended to prove that in September, 1912, the insured was in perfect health; that on that day he was severely injured by an attack by foot-pads, from which he was confined about a month, after which he went to his office occasionally. In January he became worse and continued to decline until June, 1913, when he died from nephritis or inflammation of the kidneys. The

medical testimony was to the effect that this condition of the kidneys might have been produced by direct injury from the blows he received. *Held*, that from these facts the jury was justified in finding that death resulted directly and independently of all other causes from the injury.

*Bellows v. Travelers' Insurance Company* (Mo. S. C.),  
203 S. W. Rep. 978; 52 Ins. Law Jour.  
268.

#### **Fall—Cerebral hemorrhage—Paralysis.**

The policy excepted disability or loss from cerebral hemorrhage, whether caused by accidental means or not. Insured fell and struck his head, rupturing a blood vessel and causing a cerebral hemorrhage. The cerebral hemorrhage in turn caused partial paralysis. *Held*, that there could be no recovery.

*Order of United Commercial Travelers of American v. Dobbs* (Texas C. A.),  
204 S. W. Rep. 468; 52 Ins. Law Jour.  
413.

#### **Handling infected rags—Kidney disease.**

Kidney disease produced by handling infected rags in the discharge of her duties is within an employer's liability policy, insuring against loss

from liability on account of bodily injuries "accidentally" suffered.

*Columbia Paper Stock Co. v. Fidelity Casualty Co.* (St. Louis C. A., Mo.),  
104 Mo. App. 157; 78 S. W. Rep. 320.

**Lifting—Ruptured blood vessel—Arterio sclerosis.**

The rupture of a blood vessel caused by the lifting of a considerable weight, together with the fact that the person was at the time suffering with arterio sclerosis, a hardening of the blood vessels, was not an "accident," within the meaning of that term, in a certificate of a beneficial association providing for indemnity in case of accidental injury.

*Niskern v. United Brotherhood of Carpenters & Joiners of America* (N. Y. App. Div.),  
87 N. Y. Supp. 640; 93 App. Div. 364.

**Shot self in foot—Tetanus or lockjaw—Cut throat while suffering pain—Suicide.**

The policy insured against death resulting from bodily injuries through accidental means alone, independently of all other causes, and provided that it should not cover suicide, sane or insane, or intentional injuries. Insured accidentally shot himself in the foot. The wound resulted in tetanus or lockjaw, and on the eighteenth day after the accident insured was found dead, with his throat cut and a scalpel in his hand, having also evidently been in the embrace of tetanic

spasms, causing intense agony at the time of his death. There was also evidence that either the tetanic spasm or the cut would have sufficed to cause the insured's death, while expert witnesses differed in their opinions as to which did cause it. *Held*, that in this state of the evidence, the question of the proximate cause of death was for the jury, and it was not error for the Court to refuse to direct a verdict for defendant.

The jury returned the finding that the shot wound was the proximate cause of death, and it was *Held*, that this fully justified a judgment for plaintiff.

*Travelers' Insurance Company v. Melick*  
(U. S. C. C. A.),

65 Fed. Rep. 178; 12 C. C. A. 544; 27  
U. S. App. 547; 27 L. R. A. 629; 6 Ch.  
L. J. 368; 24 Ins. Law Rep. 430.

**Exercising with Indian clubs—Ruptured blood vessel—  
Abscess in lungs.**

Where it appeared that one who was insured under an accident policy burst a blood vessel while exercising with Indian clubs, it was held, under a clause in the policy which provided that insurance should not extend to death caused wholly or in part by disease, nor to any case except where the injury was the proximate and sole cause of death, that if the deceased sustained injury by the rupture of a blood vessel in his lungs, and that necessarily produced inflammation, and that necessarily produced a disordered condition of the injured organ, which was in con-

sequence followed by the formation of abscesses and the accumulation of injurious substances or matter in the lungs, and so there resulted a diseased state of the lungs, whereby they could no longer perform their functions, and in consequence the insured died; that is, if all these results followed the injury as its necessary consequence, and would not have taken place if it had not been for the injury, then the injury could be said to be the proximate cause of death. But if an independent disease supervened upon the injury, one not necessarily produced by the injury, or if the alleged injury merely brought into activity a then existing, although slumbering disease, and the death of the deceased was caused wholly or in part by such disease, then it could not be said that the injury was the sole and approximate cause of the death.

*McCarthy v. Travelers' Insurance Company,*  
Fed. Cas. No. 8,682; 8 Biss. 362.

#### Jumping from car—Rupture.

A rupture effected by the insured's jumping from cars, or running to see if they were coming, where he acted for his own convenience, and not from perilous necessity, and without stumbling, slipping, or falling, is not an injury caused by "violent and accidental means" within the condition of an accident policy.

*Southard v. Railway Passengers' Assurance Company,*  
Fed. Cas. No. 13,182; 34 Conn. 574.

**Swinging sledge hammer—Strain—Abdomen injured—Hernia.**

Where a blacksmith, who was a hale and hearty man, and accustomed to the use of a sledge hammer, immediately after striking a slanting blow with a sledge hammer was seized with a pain in his abdomen, and it was discovered that he had sustained a rupture resulting in a hernia, which injury caused his death, the question whether the injury was covered by a policy insuring him against bodily injury effected through "external, violent, and accidental means" was for the jury.

An accident policy, providing that the insurance shall not cover "injuries or death resulting from, or caused directly or indirectly, wholly or in part, by disease or bodily infirmity, hernia \* \* \* rupture," etc., does not except an injury caused by external violence, and resulting in hernia.

*Atlanta Accident Association v. Alexander,*

104 Ga. 709; 30 S. E. Rep. 939; 42 L. R.  
A. 188; 28 Ins. Law Jour. 83.

**Lifting a truck—Strain—Hernia.**

Insured, who was a hostler helper in a railway shop, while lifting a truck, gave down and soon died by reason of a hernia. *Held*, where a policy of accident insurance exempts the insurer from liability if the death is caused by hernia, such stipulation will not release the insurer when the hernia itself is caused by accident.

*Summers v. Fidelity Mutual Aid Association,*

84 Mo. App. 605.

**Finger cut in breaking glass bottle—Septicaemia—  
Blood poisoning.**

Insured, a physician, while preparing medicine for a patient suffering with syphilis, accidentally broke the neck of a glass bottle and wounded his finger with a piece of glass. He immediately dressed and bandaged it, but he contracted septicaemia, from which he died. *Held*, that the accidental wounding of the finger, and not the blood poisoning, was the proximate cause of his death, within an accident policy insuring against accidental injuries, except death caused from voluntary or involuntary taking of poison or contact with a poisonous substance.

*Central Accident Insurance Company v.  
Rembe,*  
220 Ill. 151; 77 N. E. Rep. 123; 5 L. R.  
A. (N. S.) 933; 5 Ann. Cas. 155; 110  
Am. St. Rep. 235;  
Affirming judgment: 122 Ill. App. 507.

**Bathing—Seized with cramps—Drowned.**

Where insured was in bathing, and was seized with cramps and drowned, the drowning, and not the cramps, was regarded as the proximate cause of death.

*Knickerbocker Casualty Company v.  
Jordan,*  
7 Wkly. Law Bul. (Ohio) 71.

**Fall—Somnambulism.**

If one walking in his sleep fell from a window and was killed, somnambulism might be regarded

as the proximate cause of death. It would not be so regarded if insured awakened, and falling asleep again, then fell from the window.

*Travelers' Insurance Company v. Harvey* (Va. S. C. A.),  
82 Va. 949; 5 S. E. Rep. 553.

**Carrying baggage—Over-exertion—Loss of sight—Emaciated condition.**

Where insured, while in an emaciated and feeble condition, after safely alighting from a train, carried his baggage weighing sixty or eighty pounds, a distance of about fifty yards, and in so doing received an injury in some way, so that soon after putting the baggage down a defect in the vision of one of his eyes became apparent, which finally resulted in a total loss of the sight of that eye, being pronounced by the attending physician to be due to paralysis of the optic nerve or retina, although he did not fall or receive a blow, jar, or shock of any kind, and there was nothing unusual in his manner of carrying the baggage or in his method of walking while so doing, and the Court said that even if plaintiff's injury was attributable to the carrying of the baggage, it was not effected by "external, violent or accidental means" within the meaning of the policy.

*Cobb v. Preferred Mutual Accident Association*,  
96 Ga. 818; 22 S. E. Rep. 976; 25 Ins.  
Law Jour. 59.

**Blow—Pitching hay and fork slipped injuring bowels  
—Peritoneal Inflammation.**

Where insured, who had formerly been a farmer, while pitching hay in the field of a relative whom he was visiting, received an injury caused by the handle of a pitchfork, which he was using, slipping through his hand and striking him in the bowels, producing peritoneal inflammation resulting in death, it was *Held*, that the death resulted from an injury occasioned by accident.

*North American Life & Accident Company v. Burroughs,*  
69 Pa. St. 43; 8 Am. R. 212.

**Abrasions of skin of toe by new shoes—Blood poisoning.**

Where an abrasion of the skin of a toe, due to wearing new shoes, resulted in blood poisoning which caused the death of the insured, the insurer was held liable.

If a disease resulting in death is the effect of an accident, so as to be a mere link in the chain of causation between the accident and the death, the death is attributable, not to the disease, but to the accident alone.

*Western Commercial Travelers' Association v. Smith* (U. S. C. C. A., 8th Cir., Mo.),

85 Fed. Rep. 401; 29 C. C. A. 223; 56 U. S. App. 393; 40 L. R. A. 653; 27 Ins. Law Jour. 530.

**Eating unsound oysters—Ptomaine poisoning.**

Where insured knowingly ate oysters, but did not know that he was eating unsound oysters, his death, which was caused thereby, was not the natural and probable consequence of eating sound oysters, and the effect produced by the eating of the unsound oysters could not have been reasonably anticipated or foreseen, and unusual, and therefore it cannot be said that he voluntarily ate the unsound oysters. This being true, his death was caused by "accidental means" as that term is used in the policy of insurance.

*Maryland Casualty Company v. Hudgins*  
(Texas Civ. A.),  
72 S. W. Rep. 1047; 32 Ins. Law Jour.  
665.

Reversed, as follows:

A policy insuring against bodily injuries through external, violent and accidental means, but excepting from its operation injuries resulting from poison of anything accidentally or otherwise taken, save by choking in swallowing, does not insure against death caused by the voluntary eating of spoiled oysters, whether the oysters were poisonous or not, or whether they were taken accidentally or not.

*Maryland Casualty Company v. Hudgins,*  
97 Tex. 124; 76 S. W. Rep. 745; 64 L.  
R. A. 349; 1 Ann. Cas. 252; 104 Am.  
St. Rep. 857; 33 Ins. Law Jour. 207.

**Fit—Fall on railroad tracks—Run over by train.**

Where the policy provided against accidental injuries the direct or sole cause of death, but excepted "death \* \* \* arising from fits \* \* \* or any disease whatsoever arising before or at the time or following such accidental injury (whether consequent upon such accidental injury or not, and whether causing such death \* \* \* directly or jointly with such accidental injury)," and it appeared that the insured while at a railway station was seized with a fit and fell forward off the platform across the railway, when an engine passed over his body and killed him, it was *Held*, that the death of the insured was caused by accident within the meaning of the policy, and that the insurers were liable, the only question being whether death was due to the accident or to the fit.

*Lawrence v. Accidental Insurance Company,*

7 Q. B. D. 216; 50 L. J. Q. B. 522; 45  
L. T. 29; 29 W. R. 802; 45 J. P. 781.

**Trimming corn—Cut foot—Blood poisoning.**

Death resulting from a self-inflicted knife cut made by an insured while trimming a corn, which was followed by blood poisoning, is one from "accidental, external and violent" injury, within the meaning of an accident policy.

*Nax v. Travelers' Insurance Company*  
(U. S. C. C., Pa),

130 Fed. Rep. 985; 37 Ch. L. N. 89; 33  
Ins. Law Jour. 920.

Reversed on other grounds:

*Travelers' Insurance Company v. Nax,*  
142 Fed. Rep. 653; 73 C. C. A. 649; 35  
Ins. Law Jour. 539.

**Punctured hand with embalming needle—Blood poisoning.**

Insured in an accident insurance policy insuring against death through external, violent and accidental means, sustained a physical injury while embalming a dead body. The injury consisted of a puncture of the palm of the hand with the point of an embalming needle, which induced blood poisoning, causing death three weeks later. The proof of death proved the external wound on the hand of the insured, and that blood poisoning therefrom caused his death. It also showed a combination of circumstances indicating that the wound had been received in embalming a dead body. It was shown by a witness acquainted with the instrument that the shape and appearance of the wound were such as could have been produced by the point of an embalming needle. *Held*, that the proof sufficiently showed an accidental injury and the accidental nature of the death of insured.

Also *Held*, that this was not within the exception in the policy, "contact with poisonous substances."

*Simpkins v. Hawkeye Commercial Men's Association,*  
148 Iowa 543; 126 N. W. Rep. 192; 39  
Ins. Law Jour. 1069.

**Swallowed fishbone—Fishbone lodged in rectum—  
Blood poisoning.**

The policy insured against injuries received "through external, violent and accidental means." Insured's death was caused by a fishbone he had swallowed lodging in his rectum, which caused blood poisoning. *Held*, that this was from external means; also that as he is presumed to have given heed to the instincts of self-preservation, it is not to be inferred that he swallowed the bone voluntarily.

*Jenkins v. Hawkeye Commercial Men's Association,*  
147 Iowa 113; 124 N. W. Rep. 199; 30  
L. R. A. (N. S.) 1181, and note; 39  
Ins. Law Jour. 434.

**Foot cut on broken earthenware pan—Erysipelas.**

Where insured accidentally cut his foot against the broken side of an earthenware pan and died shortly thereafter from intervening erysipelas, the insurer was held not liable under a policy excepting "any other disease or secondary cause or causes arising."

*Smith v. Accident Insurance Company,*  
L. R. 5 Exch. 302; 39 L. J. Ex. 211; 22  
L. T. 861; 18 W. R. 1107.

**Epileptic fit—Fell into stream—Drowned.**

Where insured under a policy excepting "injury caused by, or arising from natural disease, or weakness or exhaustion consequent upon dis-

ease," was seized with an epileptic fit while crossing a stream and fell into the stream and was drowned while suffering from the fit, it was *Held*, that the accident was within the policy, and not within the exception.

*Winspear v. Accident Insurance Company,*

6 Q. B. D. 42; 43 L. T. (N. S.) 459; 29  
W. R. 116.

#### Disease or accident.

In an action for a loss on a policy against death by accident a statement made by deceased to his physician, upon which the physician forms his opinion, and makes a prescription, is competent evidence to prove what was the actual cause of his illness and death, although the symptoms are such as might be produced either by disease or by the accident.

*Dabbert v. Travelers' Insurance Company,*

2 Cinn. Sup. Ct. Rep. 92; 13 Ohio Dec.  
792.

#### Typhoid fever—Accident—Disease.

The opinions of attendants or relatives who are non-experts in medical science, and who were shown to have nursed not more than two or three typhoid fever patients, that the insured did not

have typhoid fever and that his death was due to accidental causes, are not admissible.

*American Accident Company v. Fidler's Admrx. (Ky. C. A.),*  
18 Ky. Law Rep. 161; 35 S. W. Rep. 905;  
Affirmed: 36 S. W. 528; 20 Ky. Law Rep. 1206; 49 S. W. Rep. 1110.

**Fall in street—Leg injured—Abrasion and bruises on Hip and knee—Disease.**

Under a policy promising indemnity in case of death results solely because of bodily injuries, effected by external, violent and accidental means, and independently of all other causes, where it was alleged insured suffered a fall on the street and the evidence showed he had abrasions and bruises on his hip and knee, it was held the company would not be liable if at the time of the accident insured was suffering from a pre-existing disease, and death would not have resulted from the accident in the absence of such disease, but insured died because the accident aggravated the effects of the disease, or the disease the effects of the accident.

*National Masonic Accident Association of Des Moines v. Shryock (U. S. C. A., 8th Cir.),*  
73 Fed Rep. 774; 20 C. C. A. 3; 36 U. S. App. 658.

**Accidental injury causing bodily disease or infirmity.**

A policy provided that the company would not be liable if death resulted wholly or in part from disease. The jury were instructed that although death was caused in part by bodily infirmity and disease, yet if the insured received accidental injuries, and such bodily infirmity or disease was caused by, or was the direct result of, the injuries, then the fact that such bodily infirmity or disease contributed to the death of the insured would be no defense. *Held*, that the instruction was proper, and judgment was rendered for plaintiff.

*Coulter v. Travelers' Protective Association of America,*  
144 Ill. App. 255.

**Lifting—Strain—Intestines inflamed—Presumption of accident.**

In an action on an accident policy, an allegation that deceased accidentally and fatally strained his body "by lifting a box of ashes and cinders," from which injury he died, is not sustained by evidence that deceased was in the habit of carrying out certain ashes every evening, and that on the evening of the alleged injury he was seen shoveling ashes into a wooden box in which he usually carried them out; that the ashes were carried out that evening, though no one saw him lift the box and carry them out; and the further evidence that he died of intense inflammation of the intestines, superinduced, in their opinion, by some strain or external violence, as the presumption that the deceased lifted the box of ashes cannot be in-

dulged by the further presumption that death ensued from the injury thereby sustained.

*Globe Accident Insurance Company v. Gerish,*

163 Ill. 625; 45 N. E. Rep. 563; 54 Am. St. Rep. 486.

**Abrasions caused by use of bath brush—Limb injured—Blood poisoning.**

Plaintiff claimed that insured died of blood poisoning due to an abrasion caused by the use of a brush in the hands of a bath attendant. *Held*, a condition in a policy exempting from liability for death caused wholly or partially from disease or bodily or mental infirmity operates only where the disease or infirmity contributes, either directly or indirectly to the death.

*Vernon v. Iowa State Traveling Men's Association,*

158 Iowa 597; 138 N. W. Rep. 696; 42 Ins. Law Jour. 322.

**Hernia—Disease.**

The policy consisted of two distinct parts, one portion insuring against accidents and the other providing for indemnity in case of disease or illness. In the health portion the company agreed to indemnify for a surgical operation for scrotal or abdominal hernia. The accident portion contained no provision for indemnity for such an operation. *Held*, that under the policy hernia was classed as a disease, or the result of a disease, and

not as a result of an accident, regardless of medical views on the question, and the company was estopped, after so classifying it, to say it was other than a disease.

*Hilts v. United States Casualty Company*  
(St. Louis C. A.),  
176 Mo. App. 635; 159 S. W. Rep. 771;  
42 Ins. Law Jour. 1788.

**Leg injured—Septicaemia—Blood poisoning.**

A policy of accident insurance provided that in case of loss by accident "caused or contributed to \* \* \* by septicaemia," the insurer should be liable for only one-half the ordinary accident indemnity specified for such loss, and that loss of life by accident should be "deemed to mean death from bodily injuries \* \* \* effected solely and exclusively by external, violent and accidental means." There was evidence tending to show that insured had accidentally sustained an injury to his leg; that septicaemia set in, and death resulted. *Held*, that if the septicaemia was solely the result of the injury to the leg, the death was caused by bodily injury "effected solely and exclusively by external, violent and accidental means," within the terms of the policy, and the provision restricting the right of recovery to one-half the amount of the policy did not apply.

Blood poisoning, not caused by any disease or bodily infirmity of an insured at the time of the

injury, but resulting solely from the accident, is not a contributory cause of his death therefrom.

*New Amsterdam Casualty Company v.  
Mays* (D. C. S. C.),

43 Washington Law Rep. 39; 43 App.  
D. C. 84.

**Abscess in oesophagus—Choked on food.**

Where the insured dies from the contributing causes of choking on food and a pre-existing abscess in the oesophagus, no recovery can be had under a policy providing for payment if the insured "should receive bodily injury which was effected directly and independently of all other causes through external, violent and purely accidental means resulting in death of insured necessarily and solely from such injury"; and it is immaterial whether the abscess alone was necessarily fatal, when recovery is sought on a policy providing for payment in case of death from bodily injury effected directly and independently of all other causes through external, violent and purely accidental means.

*Crandall v. Continental Casualty Com-  
pany,*

179 Ill. App. 330; 46 Ins. Law Jour.  
737.

**Hanging—Insane—Suicide—Self-destruction — Bodily infirmities, etc.**

Death by hanging when the insured was insane is not within the exception that the insurance

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should not extend to death or disability "which may have been caused wholly or in part by bodily infirmities or disease"; the death being caused, not by bodily infirmity or disease, but by the act of self-destruction.

*Crandal v. Accident Insurance Company*  
(U. S. C. C.),  
27 Fed. Rep. 40.

Affirmed, as follows:

A policy of insurance against "bodily injuries effected through external, accidental and violent means," and occasioning death or complete disability, providing that the insurance "shall not extend to death or disability which may have been caused wholly or in part by bodily infirmities or disease, or by suicide or self-inflicted injuries," covers a death of the insured by hanging himself.

*Accident Insurance Company v. Crandal*,  
120 U. S. 527; 7 Sup. Ct. 685; 30 L. Ed.  
740.

#### **Apoplexy—Fall into water—Drowned.**

Assuming some sudden seizure caused deceased to fall into the water or came on him after he had accidentally fallen, it does not necessarily follow that his death was not caused by drowning.

The fact that the body of a person who was seen struggling in the water did not sink, as is usual in cases of drowning, is not conclusive that

the cause of death was apoplexy or sudden seizure, rather than drowning.

*Burnham v. Interstate Casualty Company of New York,*

117 Mich. 142; 5 Detroit Leg. N. 167;

75 N. W. Rep. 445; 27 Ins. Law Jour. 688.

**Disease—Defense—Rev. St. Ohio.**

Where an accident policy stipulates that the insurer shall not be liable on account of the death of the insured from disease, the stipulation is available as a defense notwithstanding Rev. St. sec. 3625, 3628, relating to defenses on the ground of fraudulent applications, but which are not applicable to a defense founded upon a limiting stipulation in the policy.

*Aetna Life Insurance Company v. Dorney* (Ohio S. C.),

68 Ohio St. 151; 67 N. E. Rep. 254.

**Swallowed hard substance—Intestinal canal perforated  
—Intestinal tissues weakened by previous sickness.**

Under a policy insuring the holder against "bodily injuries sustained through external, violent and accidental means" but excepting "injuries, fatal or otherwise, resulting from poison, or anything accidentally or otherwise taken, administered, absorbed, or inhaled, \* \* \* or any disease or bodily infirmity," and providing for the payment to his legal representatives of the full amount of the policy in case of death result-

ing within ninety days from any of the injuries insured against, independently of all other causes, a complaint states a cause of action which alleges that the insured sustained bodily injuries by swallowing certain hard, pointed, and resistent substances of food, which accidentally, by reason of the weakened condition of his intestinal tissues, caused by an illness from which he had otherwise recovered, and which weakened condition was unknown to him, so perforated and wounded his intestinal canal as to cause death within ninety days after receiving such injuries, and such injuries are covered by the policy.

*Miller v. Fidelity & Casualty Company*  
(U. S. C. C. A., New York),  
97 Fed. Rep. 836.

**Septic matter coughed into eye—Infection—Blood poisoning—No abrasion, etc.**

An accident policy covered, *inter alia*, blood poison sustained by physicians or surgeons resulting from septic matter introduced into the system through "wounds" suffered in professional operations. Plaintiff, a dentist, was operating on a patient, who suddenly coughed and particles of septic matter from the mouth were thrown against the mucous membrane of plaintiff's eye. The septic matter, without abrading, penetrating or bruising the membrane, infected it and caused blood poisoning. *Held*, that plaintiff had not received any wound, within the meaning of the

policy, and was not entitled to recover under such provision.

*Fidelity & Casualty Company of New York v. Thompson* (U. S. C. C., 8th Cir., Colorado),

154 Fed. Rep. 484; 83 C. C. A. 324; 12 Ann. Cas. 181; 11 L. R. A. (N. S.) 1069; 40 Ch. L. N. 51; 36 Ins. Law Jour. 945.

**Contact with poison ivy—Infection of hand—Poison—Disease.**

Since the word "accidental" is descriptive of means which produce effects which are not their natural and probable consequences, where insured died as the result of his hand coming in contact with poison ivy while he was cutting a branch in the woods near a city, his death was "accidental" within the meaning of the policy.

*Dent v. Railway Mail Association* (U. S. C. C., Minnesota),

183 Fed. Rep. 840; L. R. A., 1915-A, 314; 40 Ins. Law Jour. 828.

Judgment modified as follows:

*Held*, within the terms of an accident policy, and such death did not result from poison "taken or administered," nor from disease, within the exceptions in an accident policy.

*Railway Mail Association v. Dent* (U. S. C. C. A., Minnesota),

213 Fed. Rep. 981; 130 C. C. A. 387; 44 Ins. Law Jour. 304.

**Abrasions of skin accidental—Infection—Blood poisoning.**

Where insured suffers an abrasion of the skin through accidental means and blood poisoning follows, from which he dies, the death in such case is not a "death resulting from infection." The injury in such case is the proximate cause of death.

Where germs causing blood poisoning entered abrasion caused by accident, death *Held* to have resulted directly and without any intervening cause from bodily injury, within an accident policy.

*Ballagh v. Interstate Business Men's Accident Association,*

176 Iowa 110; 155 N. W. Rep. 241;  
L. R. A., 1917-A, 1050; 47 Ins. Law  
Jour. 323.

Rehearing denied: 157 N. W. Rep. 726.

**Eye injured—Loss of eye from negligent treatment.**

An accident policy held not to entitle insured to weekly indemnity for injury to his eye, which was destroyed, where the injury itself did not destroy the eye, but negligent treatment did, and incapacity to attend business did not occur until after the treatment.

*Hummer v. Midland Casualty Company,*  
181 Mich. 386; 148 N. W. Rep. 413; 44  
Ins. Law Jour. 473.

**Fell or jumped from steamer—drowned—Nephritis.**

The death of insured held the proximate result of an illness, and not an accident, where the insured, while suffering from nephritis, and who was delirious part of the time, either fell or jumped overboard from an ocean steamer.

*Rathman v. New Amsterdam Casualty Company* (Mich. S. C.),  
186 Mich. 115; 152 N. W. Rep. 983;  
L. R. A., 1915-E, 980; Ann. Cas.,  
1917-C, 459; 57 L. R. A. (N. S.) 980;  
46 Ins. Law Jour. 373.

**Railroad accident—Paralysis.**

Where the paralysis is a direct incident and a part of the bodily injury effected through external, violent or accidental means, under an insurance policy providing for indemnity at the rate of \$100 per month for disability, not exceeding 24 months, resulting from injuries sustained while riding within a passenger car, and also limiting the company's liability to four weeks in any one year for disability due to either accident or illness resulting from paralysis, the company is liable for 24 monthly payments for paralysis resulting from a railroad accident.

*Moore v. General Accident, Fire & Life Insurance Corporation,*  
158 N. C. 305; 73 S. E. Rep. 1002; 41  
Ins. Law Jour. 194.

**Fall produced insanity—Suicide.**

The death of a person who kills himself while insane cannot be considered to be accidental, so as to be covered by an insurance policy excepting the case of a person dying by his own hand, sane or insane, because his insanity was produced by a fall received in an accident.

In this case the insured killed himself while insane, and the beneficiary contended that she should have been permitted to go to the jury on the question as to whether the infirmity was due to an injury which the insured had received six weeks before. The court said that under the evidence the accident did not seem to have had anything to do with the insanity, but that even if the accident was the producing cause of the insanity, and by reason of such insanity the insured took his own life, it would not logically follow that the suicide or self-destruction was caused by the injury; that the cause and effect were too remote and unconnected and the question as to whether the injury was the cause of the killing was too conjectural to be submitted to the jury.

*Streeter v. Western Union Mutual Life  
& Accident Society,*  
65 Mich. 199; 31 N. W. Rep. 779; 8 Am.  
St. Rep. 882.

**Over-exertion—Strain—Carrying casket downstairs—  
Dilation of heart.**

Death from dilation of heart from over-exertion causing strain resulting from carrying heavy

casket down flight of stairs without slipping or stumbling, is not due to "accidental means."

*Rock v. Travelers' Insurance Company*  
(Cal. S. C.),

156 Pac. Rep. 1029; 47 Ins. Law Jour.  
717.

**Struck by pole—Strain—Over-exertion.**

The policy insured against death resulting from "bodily injuries effected through external, violent and accidental means." The insured was a bridge builder, and while raising the bents of a bridge the foot of one of the parts slipped, and an unexpected weight was thrown on the pike poles in the hands of the men, and the insured was either struck by the end of his pole or subjected to a strain of great severity, and was disabled and subsequently died. *Held*, sufficient evidence to go to the jury on the question whether the death resulted solely from the accident, and the over-exertion used to avoid being crushed by a descending weight is not within the exception as to over-exertion, etc.

*Reynolds v. Equitable Accident Association,*

59 Hun, 13; 1 N. Y. Supp. 738;  
Affirmed: 121 N. Y. 649; 24 N. E. Rep.  
1091.

**Insect bite—Venom—Poison.**

Where in an action on an accident policy providing that the insurance should not extend to an

injury caused by "poison in any form or manner," it appeared that the insured was stung or bitten by some venomous insect, the question whether or not the injury resulted from poison in the sense of the policy, was properly left to the jury under an instruction from the Court distinguishing venom from poison.

*Preferred Mutual Accident Association  
v. Beidelman (Pa),  
1 Monag. 481.*

**Morphia injection—Leg injured with hypodermic needle—Blood poisoning.**

The policy insured against "bodily injuries sustained through external, violent and accidental means." Plaintiff, a physician and surgeon, testified that in administering to himself in the leg, for extreme exhaustion, medicine with a hypodermic needle, his carriage, in which he was riding at the time, suddenly started, by reason whereof he inserted the needle deeply into his leg, causing an injury thereto, and, on account of and by means of which, blood poisoning and suppuration immediately set in, whereby he was disabled. His attending physician stated that the morphia injected had nothing to do with the condition of plaintiff; that it was the introduction of the needle, together with some condition of the skin or needle that caused the trouble; that either the needle was not clean or the skin was not. At the close of plaintiff's evidence a non-suit was granted. *Held*, that the Court erred in granting

the non-suit; that it was a question upon the evidence for the jury as to whether the injury was the result of external, violent and accidental means. Company liable.

*Bailey v. Interstate Casualty Company*  
(N. Y. S. C., App. Div.),  
40 N. Y. Supp. 513; 8 App. Div. 127.  
Affirmed: 158 N. Y. 723; 53 N. E. Rep.  
1123.

**Finger cut or lacerated accidentally—Erysipelas.**

In an action on an accident policy which provided that the insurance should not extend "to injuries of which there should be no visible mark on the body of the insured," where the answer admitted the death of deceased from erysipelas ensuing upon the accidental cutting and laceration of one of his fingers, the subsequent allegation that "there was no visible mark of said alleged accidental injury upon the body of plaintiff's testator" is repugnant to the admission, and the defense is not well pleaded.

*Bernays v. United States Mutual Accident Association of N. Y.*  
45 Fed. Rep. 455; 20 Ins. Law Jour.  
852.

**Lifting heavy substance which fell or struck assured—  
Lungs or stomach injured—Blood vessel ruptured—  
Lifting and straining.**

In an action on an accident policy insuring "against loss effected solely, directly and inde-

pendently of all other causes, by bodily injuries sustained through external, violent and accidental means," for the death of assured alleged to have been caused from bodily injuries to his lungs or stomach, or the rupture of some blood vessel, caused by being strained in lifting and handling some heavy substance, and the said substance while being so lifted or handled, fell against or struck assured, causing said injury, the company was held liable.

*Pervanger v. Union Casualty & Surety Company,*

85 Miss. 31; 37 So. Rep. 461.

**Lifting—exertion—Dilation of heart.**

A policy insured deceased against the effects of bodily injuries caused solely by external, violent and accidental means. Deceased was a strong, apparently healthy man, 58 years of age, who had never been sick, and who was accustomed to lift from 200 to 250 pounds without difficulty. Immediately after making a lift of 350 to 400 pounds bar, he became sick and pale, his extremities became cold, and cold perspiration stood out on his face and hands, and the exertion caused a violent dilation of the heart. *Held*, that the accident was within the terms of the policy.

*Horsfall v. Pacific Mutual Life Insurance Company,*

32 Wash. 132; 72 Pac. Rep. 1028; 63 L. R. A. 425; 98 Am. St. Rep. 846.

**Contact with poison ivy—Inflammation of eyes—Poison or infection.**

Where an accident policy provides that insurance shall not cover injury resulting from any poison or infection, or from anything accidentally or otherwise taken, administered, absorbed or inhaled, no recovery can be had for inflammation of the eyes in consequence of accidentally coming in contact with poison ivy whereby the irritating poison was absorbed into the eye.

*Preferred Accident Insurance Company  
v. Robinson,*  
45 Fla. 525; 33 So. Rep. 1005; 61 L. R.  
A. 145; 3 Ann. Cas. 931.

**Thrown against side of car—Back and kidneys injured  
—Bright's disease.**

The policy provided for benefits in case of death through external, violent, and purely accidental causes, solely and independently of all other causes. The insured, who was a brakeman on a freight train, started to get on the caboose, and missed one hand-hold and hung on with the other one. He was thrown against the end sill of the caboose, and was limping when he came into the caboose in the presence of the witnesses. Two days after he was hurt the insured had to quit work and take to his room or bed where he remained until his death a little more than two months later. There were bruises upon his back, one of them just below the shoulder blade and another just over the right kidney. He com-

plained of great soreness of the back, and within ten days after receiving his injuries became unable to relieve himself of his urine and a catheter had to be used upon him for that purpose. The attending physician testified that he had been called to see the injured before the injury and had never known him to be affected in any way, or to have any trouble with his kidneys. The physician made an examination of insured's urine and discovered that he had Bright's disease, but thought the injury the exciting or proximate cause of it; and he and another physician, who also visited the insured, both testified that persons with Bright's disease often lived fifteen or more years, and that even some aggravated cases recovered. The evidence also showed that the insured was a reasonably healthy and vigorous man before receiving his injuries. *Held*, that taking the testimony as a whole, and especially the inference that may be drawn from the statements of the physician, that but for his injuries the insured might not have had Bright's disease, and that the injuries alone were such as might have produced death, we are not prepared to say that there was no evidence to support the verdict. The verdict was in favor of plaintiff, and was affirmed against company.

*Continental Casualty Company v. Hunt*  
(Ky. C. A.),

28 Ky. Law Rep. 1006; 90 S. W. Rep.  
1056.

**Fall—Fatty degeneration of heart.**

Where it was alleged insured suffered a fall on the street and the evidence showed he had abrasions and bruises on his hip and knees, and it appeared that the insured after his death was found to have had fatty degeneration of the heart, *Held*, where there is a conflict of evidence as to whether an accident or a disease caused the death of one insured against death by accident, the question is for the jury. Judgment affirmed against company.

*Modern Woodmen Accident Association v. Shryock* (Neb. S. C.),  
54 Neb. 250; 74 N. W. Rep. 607; 39 L. R. A. 826; 27 Ins. Law Jour. 772.

**Fall into cistern—Drowned—Insanity or insane delusion.**

If insured fell into a cistern and was drowned while trying to hide herself from imaginary pursuers in an insane delusion, the accidental fall, and not her volitional act, was the proximate cause of her death.

*Christy v. American Temperance Life Insurance Company*,  
123 N. Y. Supp. 740; 68 N. Y. Misc. Rep. 178; 39 Ins. Law Jour. 1192.

**Swung against moving car—Appendicitis—Surgical Operation—Not immediate disability.**

The policy insured against “total disability resulting immediately, continuously and solely

from accidental injuries." On August 6, while insured was trying to get on a moving car, he swung against the side of the car injuring himself. Finally, on August 16, he was operated on for appendicitis. He died on August 21. *Held*, that the accident was not of such character as to be within the terms of the policy. It was not followed by immediate, continuous and total disability. While the word "immediate" should not be said to mean instantaneous, yet where several days elapse, during which time insured was able to perform his usual duties, it could not be said that the accident caused immediate disability.

*Mullins v. Masonic Protective Association* (Kansas City C. A.),  
181 Mo. App. 394; 168 S. W. Rep. 843;  
44 Ins. Law Jour. 470.

#### **Accidental injury—Orchitis.**

Where an accident policy provided that "no disability shall constitute a claim for accident \* \* \* nor for injury, sickness, or disability which results from or is attributable to \* \* \* orchitis." It is conceded that plaintiff's disability was due to orchitis. *Held*, that, whether the orchitis resulted originally from an accident or not seems to be of little moment, under the express provision of the contract.

*Sweeney v. National Relief Assurance Association* (N. Y. S. C., App. Tr.),  
101 N. Y. Supp. 797; 52 Misc. 144.

**Cranking automobile—Fall—Injured stomach—Cysts on kidney.**

The policy insured against death caused "directly, independently and exclusively of all other causes from bodily injuries effected solely through accidental means." While cranking his automobile insured apparently lost his footing on the loose and sandy surface of the roadway and fell on his stomach. He immediately began to suffer pain. In the night he was feverish and his urine soon became bloody. Three days afterwards he took to his bed, and just a week afterwards was removed to a sanitarium and his left kidney removed. It was found to be covered with large cysts. There was medical testimony, conflicting upon the point, whether this condition of the kidney could have been produced by the fall, and as to whether or not the kidney had been diseased before the date of the fall. *Held*, that under this evidence it was a question for the jury as to whether or not insured's death resulted solely from accidental means; also *Held*, the injuries so sustained were "accidental" within the meaning of an accident policy.

*Preferred Accident Insurance Company  
v. Patterson* (U. S. C. C. A., 3rd Cir.,  
New Jersey),  
213 Fed. Rep. 595; 130 C. C. A. 175;  
44 Ins. Law Jour. 297.

**Stepped from sidewalk to street—Jolt—Bowel injured  
—Intussusception.**

Insured while hastening to a train, stepped from sidewalk to the street, receiving a jolt, because of which he made immediate complaint. He was a physician, and as soon as he reached home procured medicine which he took. His brother, who was also a physician, treated him from the time of the jolt, until he died, as well as two other physicians who were called into the case, testified that in their judgment the jolt which he received when he stepped from the pavement caused a bowel to slip into the other; that this had produced the pain which immediately followed, and also caused the tenderness and swelling of the bowels which soon thereafter set up; that at first the obstruction of the bowel was partial, but that later the obstruction became total, and after this they were unable to get any action of his bowels, and he died from intussusception. The beneficiary sustained her theory as to the causes of death by four physicians whom she introduced. The company introduced four physicians, who did not see deceased or know his symptoms, who gave it as their opinion that his death could not have been caused by intussusception. *Held*, that the evidence sustained the finding that insured had died from intussusception, caused by the jolt, a bodily injury effected through external, violent and accidental means.

*General Accident & Life Assurance Corporation, Limited, v. Meredith (Ky. C. A.),*

141 Ky. 92; 132 S. W. Rep. 191; 40 Ins. Law Jour. 401.

**Eating unsound food—Ptomaine poisoning—Tuberculosis.**

Insured died from ptomaine poisoning caused by eating food not knowing same to be unsound. *Held*, death resulted from an accident.

The testimony of the mother of assured as to statements made by assured to the effect that he was suffering from ptomaine poisoning was competent to rebut testimony of a physician introduced by the company to the effect that his examination of assured, report of which was made to the mother, showed that assured was suffering from tuberculosis.

*Johnson v. Fidelity and Casualty Company,*

184 Mich. 406; 151 N. W. Rep. 593;  
L. R. A., 1916-A, 475; 45 Ins. Law Jour. 758.

**Handling heavy material—Finger bruised—Felon.**

It was shown that insured had a felon commencing the day after he was handling heavy material, and bruised his finger. The evidence held sufficient to show that a felon on insured's finger was the natural consequence of a bruise accidentally received 24 hours previously, without any intervening cause, and is covered by a policy

insuring against accidental injuries leaving "external and visible marks of a wound."

*Robinson v. Masonic Protective Association,*

87 Vt. 138; 88 Atl. Rep. 531; 47 L. R. A. (N. S.) 924; 42 Ins. Law Jour. 1794.

#### Abrasion of skin—Blood poisoning.

If blood poisoning results from an accidental abrasion of the skin or wound, the accident and not the disease is to be regarded as the proximate cause of death.

Blood poisoning from accident is a part of the accident within an accident policy.

*Continental Casualty Company v. Mathis,*

150 Ky. 477; 150 S. W. Rep. 507; 42 Ins. Law Jour. 159.

#### Accident—Uraemic convulsions.

In an action for death on an accident policy, evidence of decedent's attending physician and other experts that decedent's death was due to accident, and not to uraemic convulsions, was competent to show the real cause of death, though it tended to contradict some of the statements of opinion in plaintiff's preliminary proof.

*Traiser v. Commercial Travelers' Eastern Accident Association,*

202 Mass. 292; 88 N. E. Rep. 901; 38 Ins. Law Jour. 932.

**Injury—Hernia.**

The accident policy provided for a weekly indemnity for loss of time if through external, violent and accidental means insured should be wholly disabled, or if not so wholly disabled he should be prevented from performing important daily duties pertaining to any productive occupation. The policy further provided that on disability due to \* \* \* hernia, the limit of the company's liability should be one-fifth of the amount otherwise payable. Insured, a law and stock agent for a railway, received an injury, which produced hernia. He was not so disabled as to prevent him from engaging in any productive occupation, nor was he prevented from the performance of one or more important daily duties pertaining to any productive occupation, and lost no time from his business. *Held*, that insured was not entitled to recover on the policy.

*Ætna Life Insurance Company v. Lassater,*

153 Ala. 630; 45 So. Rep. 166; 15 L. R. A. (N. S.) 252; 37 Ins. Law Jour. 982.

**Injury—Diabetes.**

In an action on an insurance policy, a verdict of the jury that deceased died of diabetes (traumatic diabetes) caused by an accidental injury *Held* sustained by the evidence.

*Strehlow v. Ætna Life Insurance Company,*

183 Ill. App. 50.

**Infection during professional operation—Blood poisoning—Loss of sight.**

In an action upon an accident policy, which insured a surgeon against loss of sight by blood poisoning during a professional operation, evidence held to show the loss of sight, occurring more than five months after the operation was due to infection received at that time.

*Maryland Casualty Company of Baltimore v. Ohle,*

120 Md. 371; 87 Atl. Rep. 763; 42 Ins. Law Jour. 1559.

**Dove in lake—Drowned—Bruises on face—Heart trouble.**

Insured while rowing in a lake dove head first into the water. He came up once, appeared to struggle and then sank and was seen no more alive. The next day his body was recovered. There were some bruises on the face shown to have been caused before his death. There was some evidence that insured had suffered from heart trouble, but no substantial evidence that he died from any such ailment. *Held*, that this evidence conclusively showed that death was due to accidental drowning.

*Johnson v. Bankers Mutual Casualty Company,*

129 Minn. 18; 151 N. W. Rep. 413; 56 L. R. A. (1915-D) 1199; Ann. Cas., 1916-A, 154; 45 Ins. Law Jour. 622.

Fall from buggy—Head injured—Contusion of face and head—Cerebral hemorrhage—Apoplexy—Heart failure.

The evidence tended to show that on the 5th day of October, 1904, the assured was driving in a single buggy; that while his horse was on a walk, and while he was putting on his gloves, he reached forward, apparently to gather up the reins, which lay across the dashboard of the buggy. At that instant, while the assured was so leaning forward, the buggy struck some obstruction in the street, which caused the hind wheels to rise up with a "jerk" or "bounce", and thereupon said assured fell from the buggy, striking the forward wheel, and then striking his head upon the cobblestone pavement; that he was picked up and carried to an adjacent building, where he died in about ten minutes. He had a contusion on his face and on the right side of his head immediately back of the ear. The evidence leaves it uncertain as to what the obstruction was which the wheels of the buggy struck. It appears that the assured was a man about fifty years of age, that he was about 5 feet 8 inches in height, weighed about 225 pounds, wore a No. 18 collar, and was a heavy eater, although it appears that he was in good general health, and did not appear to be suffering from any bodily ailment on the day of the alleged accident. Plaintiff in error also offered in evidence, which was not seriously controverted, that the injuries incident to the fall were sufficient to produce death in the case of a

healthy person. There was no post-mortem examination, and the body of assured was examined only by the coroner. In the first instance, he filed a certificate that death occurred as the result of apoplexy, but after further examination into the circumstances of the case, a second certificate was filed attributing the death to cerebral hemorrhage, occasioned by the fall from the buggy. Some expert evidence was offered by medical men who were acquainted with assured in his lifetime, to the effect that the assured, as to age, habit of life and general appearance, belonged to a class from whom apoplexy selects its victims. Expert testimony, predicated upon hypothetical questions, was received as to the probable cause of the death of assured, and such testimony was conflicting. The contention of the defense is that the assured was stricken with apoplexy or heart failure before he fell from the buggy, and that death did not therefore result from accident so as to bring the case within the terms of the policy. *Held*, that the cause of the death of insured was a question for the jury.

*McCormack et al. v. Illinois Commercial Men's Association* (U. S. C. C. A., 7th Cir., Illinois),  
159 Fed. Rep. 114; 86 C. C. A. 304.

**Blow on chest—Chest discolored—Spit blood—Disease.**

In an action on a policy of insurance where the issue was whether insured's death was due solely to accident, questions put to physicians as to whether or not if insured received a blow on the

chest sufficiently violent to knock him down and discolor his chest and to make him spit blood, the blow was the probable cause of a disease causing death, was proper.

*Empire Life Insurance Company v. Gee,*  
178 Ala. 492; 60 So. Rep. 90; 42 Ins.  
Law Jour. 234.

**Fall—Head injured—Blood clot on brain—Cerebral hemorrhage.**

A policy insured against death from external, violent and accidental injuries. The insured was a postal agent. He was found in a semi-conscious condition in his car, and a day later died. An examination at his home by the attending physician disclosed a swelling and redness on his head above the right temple, and afterwards two other external marks or swellings were discovered by the nurse or physician. After his death an autopsy was held by two physicians, who testified that they found a blood clot in the skull on the side where the swelling had appeared, and that the clot was, in their judgment, produced by external violence and not by disease. For two days previous to the time he was found in the car, he had complained of severe pains in the head, and the company claimed that his death was due to cerebral hemorrhage, and offered expert testimony to substantiate their contention. The company also showed that insured had stated, while semi-conscious, that he had not been injured. *Held*, that

the evidence was sufficient to go to the jury.  
Company liable.

*McCullough v. Railway Mail Association,*  
225 Pa. 118; 73 Atl. Rep. 1007; 38 Ins.  
Law Jour. 175.

**Slipped and fell—Shoulder and neck hurt—Lumbago,  
crick or lame back.**

The policy provided: "loss resulting wholly or partly from \* \* \* lumbago, crick or lame back, sprain or strain of back \* \* \* is hereby classified as resulting from sickness, the original cause of such loss, or of the ailment causing the loss notwithstanding." Insured was a section hand on a railroad. While carrying a crosstie he slipped and fell. His left hip, shoulder and neck were hurt. There were no bruises of the skin, although there was a swelling of the injured portions. Insured could not bend his back for several months, nor could he use his neck. *Held*, that the evidence did not conclusively show that insured's injuries were due to lumbago, crick or lame back, or a sprain or strain of the back. The jury might reasonably have concluded that the injury was due to a bruise or contusion suffered when he fell, which did not result in either lumbago, crick or lame back. Judgment affirmed against company.

*First Texas State Insurance Company v.  
Jones (Texas C. C. A.),*  
167 S. W. Rep. 9; 44 Ins. Law Jour.  
182.

**Struck with bed pan—Blood poisoning—Bed sores—Disease.**

In this case it was claimed insured was struck accidentally with bed pan, and that blood poisoning, following the infection of the injury, was the cause of his death. The company claimed that insured was suffering with bed sores and the blood poisoning developed from them. In an action on an accident insurance policy, an instruction requiring a verdict for the defendant if the jury found that death resulted wholly or in part from disease, *Held* erroneous, where the evidence tended to show that death resulted from blood poisoning caused by an infection of a slight wound.

*Maloney v. Maryland Casualty Company,*  
113 Ark. 174; 167 S. W. Rep. 845; 44  
Ins. Law Jour. 308.

Judgment for plaintiff affirmed: 178  
S. W. Rep. 387; 46 Ins. Law Jour.  
536.

**Injury—Loss of sight—Injury prior to issuance of policy caused loss.**

In an action on a policy which insured plaintiff against the effects of bodily injuries sustained during the term of the policy and caused solely through external, violent and accidental means, and wherein it was stipulated that a certain indemnity should be paid if the irrecoverable loss of sight of both his eyes should result from such injuries independently of all other causes, and

that the policy did not cover anything of which the sole or secondary or contributory cause is, or which occurs while the insured is affected by, or under the influence of bodily infirmity, where the plaintiff averred that he lost his sight by reason of an injury sustained at a certain time, and where one of the defenses of the insurance company was that an injury received long before that time, and prior to the issuance of the policy contributed to, if it did not wholly cause, the blindness of insured, and where testimony tending to support that defense was produced, as well as another defense to the effect that the warranties upon which the policy was issued, were false, it was the duty of the trial court to submit these questions to the jury. (Judgment for plaintiff below, here reversed in favor of company.)

*Pacific Mutual Life Insurance Company  
v. Despain,*  
77 Kans. 654; 95 Pac. Rep. 580; 37 Ins.  
Law Jour. 493.

Reversed against company.

*Despain v. Pacific Mutual Life Insurance  
Company,*  
106 Pac. Rep. 580; 81 Kans. 722; 39  
Ins. Law Jour. 540.

**Lifted mail bags—Strain—Ruptured blood vessels in lungs.**

In an action on an accident policy, proof that plaintiff suffered lesion of a blood vessel of the lungs while assisting to lift a heavy mail sack, and that such lesion subsequently entirely healed,

*Held*, sufficient to establish a *prima facie* case that the injury was caused by external, violent and accidental means within the terms of the policy.

*Young v. Railway Mail Association*,  
126 Mo. App. 325; 103 S. W. Rep. 557.

**Knocked down by breakers while swimming—Drowned  
—Aneurism and ruptured artery.**

There was evidence to show that insured went far out into the breakers into about six or seven feet of water. The tide was running unusually high and the breakers and undertow were unusually strong. Insured was knocked down by a breaker and on rising again knocked down. Within a few seconds afterwards he was seen floating on his back. When his body was taken from the water his heart was still beating and so continued for some time. On behalf of the company there was evidence to show that an autopsy was performed and that such autopsy showed an aneurism in a branch of the aorta and a rupture of the artery at such point. There was evidence to show that if such a rupture occurred during the life of the insured it would have caused instantaneous death. *Held*, that the evidence raised a conflict as to whether insured's death was due to drowning or to a rupture of an artery of the heart so as to require the submission of the question to a jury. Judgment affirmed against company.

*Brinsmaid v. Order of United Commercial Travelers of America*.  
157 Iowa 651; 138 N. W. Rep. 465; 42  
Ins. Law Jour. 164.

**Fall into excavation—Pneumonia.**

Where a party insured under an accident policy was injured by falling into an excavation, and a few days later was taken sick with pneumonia and died, the question whether the accident, by weakening the system, was chargeable with the death, is one of fact for the jury.

*Cronkhite v. Accident Insurance Company of N. A.,*  
35 Fed. Rep. 26; 17 Ins. Law Jour. 509.

**Fall—Dislocated shoulder—Cold—Pneumonia.**

The assured, under a policy granted by the defendant company against "death from the effects of injury caused by accident," fell and dislocated his shoulder. He was at once put to bed, and died in less than a month from the date of the accident, having been all the time confined to his bedroom. In a case stated in the reference under the defendant's special act, the umpire found that the assured died from pneumonia caused by cold, but that he would not have died when and as he did had it not been for the accident, that as a consequence of the accident he suffered pain and was rendered restless, unable to wear his clothing, weak, and unusually susceptible to cold, and that his catching cold and the fatal effects of the cold were both due to the condition of health to which he had been reduced by the accident. *Held*, that the death of the assured was due to the

“effects of injury caused by accident” within the meaning of the policy.

*Isitt et al. v. Railway Passenger Assurance Company* (Eng. C. A., Q. B. Div.),

22 Queen’s Bench Div. 504; 58 L. J. Q. B. 191; 33 Irish Law Times & Sol’rs Jour. 213; 60 L. T. 297; 37 W. R. 477.

**Stooping—Knee injured—Dislocated cartilage of knee  
—Weakness of knee or knee joint.**

The plaintiff effected an insurance with defendant “against bodily injury” caused by “violent, accidental, external, and visible means.” The policy contained a proviso, excepting, among other things, “injuries arising from natural disease or weakness, or exhaustion in consequence of disease.” In stooping to pick up a marble dropped by a child, the plaintiff dislocated the cartilage of his knee. Before the accident, the plaintiff had not suffered from any weakness of the knee or knee joint. *Held*, covered by the policy.

*Hamlyn v. The Crown Accidental Insurance Company* (Eng. C. A., Q. B. Div.),

1 Queen’s Bench Div. 750.

**Intoxication—Delirium tremens—Morphine administered causes death.**

Insured became intoxicated, and, when far towards delirium tremens, was taken for treat-

ment to a sanitarium, where a physician administered hypodermically several doses of morphine. From the immediate effect of the last dose insured died. *Held*, that the insurance company was exempt from liability by reason of the extended intoxication of the insured immediately preceding his death, from the effects of which intoxication he was suffering when he died, and to be relieved of which he was under medical treatment at the time, which treatment was superinduced by the intoxication, bringing it clearly within the provisions of the policy and application. These excepted: medical treatment, intoxication, narcotics, etc.

*Flint v. Travelers Insurance Company*  
(Texas Civ. App.),  
43 S. W. Rep. 1079.

**Diseased condition of mouth—Teeth extracted—Artery ruptured—Cotton, unknown to be infected, used caused blood poisoning—Poison excepted.**

An accident insurance policy provided that "this insurance does not cover \* \* \* injuries, fatal or otherwise, resulting wholly or in part from poison or anything accidentally or otherwise taken, administered, absorbed or inhaled." In an action on the policy the evidence tended to show that the insured, while suffering from some serious derangement of his system, which manifested itself, among other ways, by severe tooth-ache, had two of his teeth extracted by a dentist; that there was a diseased condition of the membrane surrounding some of the teeth, and a gen-

eral foul condition of the mouth; that the teeth were extracted in the usual way, but it caused a rupture of the upper maxillary artery, or branch of it, from which a violent hemorrhage ensued, and to stop that the dentist plugged the cavities with cotton; that thereafter blood poisoning ensued from the absorption into the system of some chemical poison supposed to have been caused by the propagation of disease germs in the cotton, the seat of the infection being where the teeth were extracted. *Held*, that though the fact that the cotton contained the germs which propagated and evolved the poison, that was absorbed into the blood with fatal effects, was unknown and accidental, still there could be no recovery, death from such means being within the express terms of the exception in the policy.

*Kasten v. Interstate Casualty Company*,  
99 Wis. 73; 74 N. W. Rep. 534; 40 L. R.  
A. (1898) 651; 27 Ins. Law Jour. 726.

**Trimming nail, cut toe—Senile gangrene—Leg amputated—Death—Disease.**

The plaintiff, as beneficiary of an accident policy for \$5,000, issued by the defendant company upon the life of Gabriel Kling, her husband, alleges that the assured died from injury resulting from a peril insured against, and prays judgment according to the contract. The answer admits the insurance policy, but denies that the death of the insured was caused by violent and accidental injury. The plaintiff's theory of the case is that the assured, while paring the nail,

accidentally cut the little toe upon his left foot; that senile gangrene resulted therefrom, necessitating amputation of the leg; and that death ensued within the terms of the insurance. The policy insured the deceased, subject to the by-laws of the company and to the conditions endorsed thereon, against personal injuries, effected during its life, "through external, violent and accidental means," and obligated the company to pay the beneficiary \$5,000 in case of death resulting from such injury within ninety days. One of the conditions bars liability in case of death "from disease in any form." The evidence relied on as showing that the deceased cut his toe is the testimony of the attending physician and that of the son of the deceased. The physician did not pretend to have personal knowledge of any accidental cutting. The son, however, swears in one breath: "I saw my father when he cut his toe. It was the little toe on the left foot;" and in the next breath says: "I did not see him when he cut his toe. \* \* \* The toe did not bleed profusely when it was cut. I did not see any blood, but I saw the cut." *Held*, that there was a failure of proof of accidental injury, the burden of proof resting upon the plaintiff to establish with reasonable certainty the facts essential to recovery.

*Kling v. Mason's Fraternal Accident Association,*

104 La. 763; 29 So. Rep. 332.

**Hand injured and side over heart bruised—Malignant growth of spleen and fatty degeneration of heart.**

A complaint in an action on an accident policy alleged that assured injured his hand and bruised his side over the heart, from which he died, and the bill of particulars stated that he died of the injury to his side, which caused malignant growth of the spleen and fatty degeneration of the heart. The proof did not show that deceased died of such spleen and heart trouble. *Held*, that the variance was immaterial, not prejudicing defendant within 2 Ballinger's Ann. Codes & St. Cal. sec. 4949, since the allegation that death was caused by the injuries was in no way contradicted by the particularizing as to the manner in which the injuries affected the system.

*Mercier v. Travelers' Insurance Company,*  
24 Wash. 147; 64 Pac. Rep. 158.

**Fall caused by fit or vertigo.**

Where by-laws were amended whereby the association was not to be liable for injuries occasioned, wholly or partly, directly or indirectly, by disease \* \* \* vertigo \* \* \*, etc., and the plaintiff, who thereafter, in a fit of vertigo, fell and sustained bodily injuries, was not entitled to recover under the policy.

*Hall v. Western Travelers' Accident Association,*  
69 Neb. 601; 96 N. W. Rep. 170.

**Struck by bale of hay—Back injured—Nephritis.**

In an action on an insurance policy for death by accidental injury, where it was shown that insured was injured by being struck by a bale of hay, and on the next day thereafter there was a welt on his back, and an examination on the fourth day thereafter showed a tension of the muscles of the back, and three days thereafter insured died of acute nephritis caused by the accident, and that he was free from all disease until his death except that caused by the accident, *Held* plaintiff could recover.

*General Accident, Fire & Life Assurance Company v. Homely,*  
109 Md. 93; 71 Atl. Rep. 524; 38 Ins. Law Jour. 393.

**Stumbled and fell on sidewalk—Conflicting proof.**

Insured died as the result of injuries received from a fall on the sidewalk. The questions raised by the pleadings are: (1) Whether the fall was accidental or whether caused from a diseased condition, and (2) Whether, if accidental, it was "independent of all other causes." There was evidence that insured stumbled and fell, but there was no evidence of an obstruction in the sidewalk. An autopsy was had, but the evidence conflicted as to whether insured was in a diseased condition. There was also conflict in the testimony as to whether the fall alone was sufficient to cause death. *Held*, that these issues were properly submitted

to the jury. Judgment reversed in favor of the company.

*Illinois Commercial Men's Association v. Parks* (U. S. C. C. A., 7th Cir.),  
179 Fed. Rep. 794; 103 C. C. A. 286;  
39 Ins. Law Jour. 1630.

**Strain, with internal injuries.**

Defendant accident insurance company claimed the deceased died from illness, and not accident, and called for further proofs of loss, in compliance with which an affidavit of the attending physician was furnished that deceased came to his death wholly as the result of an accident, causing a strain and perhaps accompanied with internal injuries. No further call for proofs of loss or objection to their sufficiency was made till, at the trial of a suit on the policy, the proofs were claimed to be insufficient as to the cause of death, and defendant introduced the proofs of loss, except the affidavit. *Held*, that plaintiff was entitled to put the affidavit in evidence.

*Thompson v. Loyal Protective Association,*  
167 Mich. 31; 18 Det. L. N. 575; 132 N. W. Rep. 554; 40 Ins. Law Jour. 2168.

**Leg struck with hard substance—Tibia fractured—Disease or weakness of bone.**

Insured testified that he got struck upon the leg between the knee and the ankle with some hard substance. His physician testified that insured

suffered a "fractured tibia," and over the side of the fracture there was a contusion showing the fact of external violence. *Held*, that this was sufficient evidence upon which to submit to the jury the question of whether or not the insured's injuries were the result of external violence.

An issue was raised as to whether insured's injury was the result of a diseased condition or the result of external, violent and accidental injuries. The jury, in answer to interrogatories, found that the condition was caused by external, violent and accidental means, as alleged in the complaint, and that it would have occurred even though insured was suffering from disease or weakness of the bone. *Held*, that these answers were sufficient as a finding that the condition was caused wholly by external violence.

*International Travelers' Association v.  
Bosworth* (Tex C. C. A.),  
156 S. W. Rep. 346; 42 Ins. Law Jour.  
1072.

**Fall on ice while skating—Wrist injured—Head hurt—  
Blood clot on brain—Cerebral apoplexy—Degeneration  
of nerve and brain cells.**

The policy insured against death caused through external, violent and accidental means, independent of all other causes. Insured, while skating, fell upon the ice, striking his head and shoulders. At the time he complained only of injury to his wrist. On reaching town, where he lived, a distance of one-half mile, insured stated, in answer

to a question as to whether he fell and hurt himself, "No, not seriously. Hurt my head and made it ache," at the same time raising his hand to his head. From that time until his death, which occurred about two months afterwards, there was a marked change in his disposition and appetite. An autopsy was held several weeks after his burial and a blood clot found on the brain. On behalf of the company several physicians testified that cerebral apoplexy causing death had brought about the clot of blood and that his death was not due to accidental causes. There was further evidence on the part of the company that the insured, prior to his fall, was afflicted with a serious bodily ailment, the ordinary tendency and effect of which was to cause degeneration of nerve and brain cells, and if uncured would result in manifestations such as shown by insured after his fall. *Held*, that the evidence required the submission of the question of the cause of insured's death to the jury, and that the statement by the insured was admissible as constituting a part of the *res gestae*. Judgment affirmed against company.

*Order of United Commercial Travelers  
of America v. Roth* (Texas Civ. Ct.  
App.),

159 S. W. Rep. 176; 42 Ins. Law Jour.  
1551.

**Fall on frozen ground—Head and brain injured—  
Ecchymosis of brain covering—Cerebral hemorrhage.**

The by-laws provided that "for death resulting from cerebral hemorrhage \* \* \* or heart failure

caused by accidental injuries, the amount payable shall be limited to \$500." The evidence was that insured fell heavily, striking the back of his head on the frozen ground. Some of the witnesses testified that the covering of the brain was discolored. There was evidence that the blood vessels were bruised and partly broken so that blood escaped among the tissues. Expert witnesses described the condition as ecchymosis, that is, black and blue spot produced by the effusion of blood into the tissue. *Held*, that the evidence was sufficient to sustain the verdict that death was not the result of a cerebral hemorrhage.

*Williams v. Western Travelers' Association,*

97 Neb. 352; 149 N. W. Rep. 822; 45  
Ins. Law Jour. 232.

**Abdomen injured in mail car—Traumatic appendicitis  
—Septic peritonitis.**

The policy insured against death resulting from injuries received through external violence, and accidental means, of which there were visible marks of injury and on account of which death would follow inside of 120 days. It is the theory of the plaintiff that the insured met his death as the result of septic peritonitis following traumatic appendicitis, caused by external violence. Insured was a mail clerk. Prior to July 26 he enjoyed robust health. Subsequent to that date a yellowish spot was seen on his abdomen directly over the appendix. This spot was not present the month preceding that time. On July 26 insured, after

leaving the mail car in which he worked, made an exclamation of pain and placed his hand on his abdomen. Immediately thereafter, contrary to his usual custom, he went to bed; he continued to discharge his duties until August 1, acting as if ill and in pain. On that evening he went to bed and remained there until August 11, when he was removed to a hospital, where an operation was performed, from which he died on August 13 of general peritonitis. There was a corner of a mail rack in the car in which insured worked, which was about the same level above the floor that the spot on his abdomen would have been if he were standing. The roadbed was unusually rough, and the car sometimes rocked so as to throw letters out of the mail box. *Held*, that this evidence was sufficient to submit the case to the jury on the question of whether or not the death was the result of injury producing visible marks, and as to whether or not death had occurred within 120 days following the injury. Judgment affirmed against company.

*Railway Mail Association v. Harrington*  
(U. S. C. C. A., 2nd Cir.),  
220 Fed. Rep. 622; 136 C. C. A. 230;  
45 Ins. Law Jour. 749.

**Inhaled a bug—Abscess in lung—Pneumonia.**

The policy insured against bodily injuries from external, violent and accidental means, and the insured died from pneumonia supposedly induced by a cavity or abcess in the lungs alleged to have been caused by the involuntary inhalation of a

bug. With the exception of statements made by the deceased, there was no evidence that he actually inhaled the bug; no insect or foreign substance being found in the lung. Upon these facts the court held the burden was on the beneficiary to show not only that such accidental inhalation occurred, but also that there was reasonable ground for thinking that insured's death came from that cause, rather than from disease. There being no evidence of such except for the insured's declarations and they being inadmissible as part of the *res gestae*, the judgment of the trial court against the company was reversed.

*Freeman v. Loyal Protective Insurance Company,*  
196 Mo. App. 383; 195 S. W. Rep. 545;  
50 Ins. Law Jour. 249.

**Assaulted and injured with sticks—Typhoid fever.**

The complaint alleged that the insured received bodily injuries from external, violent and accidental means on a certain date during the life of the policy of which he died within ninety days. It was the contention of the company that the insured died from typhoid fever and not from the results of accident (assaulted and injured with sticks). The physician who attended the insured testified in support of this contention.

*Maryland Casualty Company v. McCallum (Ala. S. C.),*  
75 So. Rep. 902; 50 Ins. Law Jour.  
379.

**Injury—Blood poisoning.**

The laws of the society provided that in the event of loss due directly or indirectly to blood poisoning, there should be paid but a limited amount. *Held*, that where injury is the proximate cause of death the beneficiary is entitled to the full amount provided therefor, notwithstanding complications arising subsequent to the accident.

*Kaneft v. Mutual Benefit Health & Accident Association* (Neb. S. C.),

166 N. W. Rep. 121; 51 Ins. Law Jour. 318.

**Drowning—Heart failure—Apoplexy.**

Insured was found dead on surf where he had been bathing. Evidence was conflicting as to whether death was due to drowning, heart failure or apoplexy. *Held*, where insured was drowned as the result of accident, the nature of the accident was immaterial, provided it constituted the proximate cause of the drowning. Also, *Held*, whether the insured's drowning was due to accident or to heart failure was a question for the jury, and their finding that death resulted from drowning will not be disturbed.

*Kinsey v. Pacific Mutual Life Insurance Company,*

178 Cal. 153; 172 Pac. Rep. 1098; 52 Ins. Law Jour. 256.

**Accident—Hernia.**

The policy provided: "In the event of disability resulting from \* \* \* hernia \* \* \* the limit of the company's liability shall be a sum

not exceeding three weeks' indemnity." *Held*, that such provision would not prevent recovery for disability caused by hernia accidentally produced.

*Conrad v. Interstate Life & Accident Insurance Company* (Tenn. S. C.), 206 S. W. Rep. 34; 53 Ins. Law Jour. 68.

**Fall—Boarding train—Abdomen injured—Ascitis—Liver diseased.**

Insured told his attending physician that while he was boarding a train, the train started off suddenly, throwing him violently and that he had fallen on a grip. The physician first called to attend insured diagnosed the case as ascitis, a condition signifying the accumulation of fluid in the abdomen, which could have been produced by a bruise upon the liver. Subsequently an operation was performed upon the insured and it developed that the condition was not that of ascitis, but that the patient was suffering with a malignant growth upon the liver, which could not have attained the size it was in less than six months. *Held*, that the evidence was wholly insufficient to authorize recovery and conclusively showed that insured's death was produced from causes wholly independent of and existing prior to the accident. (Judgment for plaintiff below, reversed in favor of company.)

*North American Accident Insurance Company v. Hill's Admr.*, 182 Ky. 125; 206 S. W. Rep. 170; 53 Ins. Law Jour. 61.

Reversed:

In an action on accident policy to recover for death of insured, a traveling salesman, while riding as a passenger in a railroad coach of a common carrier, the question whether insured received fatal injury from a fall while so riding was for the jury.

The credibility of the witness is a question for the jury and is not to be determined by the Court of Appeals.

*Hills' Admr'x v. North American Accident Insurance Company,*

215 N. W. Rep. 428; 55 Ins. Law Jour. 50.

**Carrying ashes—Strain or rupture in side—Loop or kink in bowel.**

Insured had previously enjoyed good health and had worked at manual labor. On the day of the alleged injury he was engaged, with another, in moving ashes. He carried several tubs of ashes, allowing the tub to rest against his stomach as he did. Some twenty minutes after the work was finished, insured's brother saw him lying on a lounge, with his hands over the pit of his stomach, very pale and as though in great pain, and saying that he did not care for dinner. Later, the person who had been assisting him noticed that he was pale and that he was holding his hands over the pit of his stomach. He suffered pain in his right side for some weeks, gradually growing worse until he died. A post-mortem was made

and there was a kink found in the bowel, that showed fibrous adhesions indicating inflammation there. Physicians were of the opinion that conditions were due to external violence. *Held*, that under this evidence the jury might have found the insured's death was caused by external, violent and accidental means.

*Budde v. National Travelers' Benefit Association* (Iowa S. C.),  
169 N. W. Rep. 766; 53 Ins. Law Jour.  
266.

**Slipped on banana peeling—Fall—Injured side—Internal injuries—Lead colic induced by lead poisoning.**

Insured was a painter; had enjoyed good health previous to his injury. While at work, painting a house, he had occasion to carry a piece of timber, and while doing so fell. He immediately complained of being hurt, groaned and said, "I hurt my side awful." In going home he walked very slowly although he was usually a rapid walker. He took to his bed and kept growing worse and died within a few days. A physician testified that because of the insured's difficulty in breathing he thought there were internal injuries. A witness, who claimed he saw insured fall, introduced into his account of the accident a banana peeling upon which insured slipped, and the physician who attended insured included in his account of the fatal illness lead colic induced by lead poisoning. *Held*, that under the evidence it was a question for

the jury, as to whether or not death was due to injuries sustained through accidental means, and the judgment in favor of plaintiff, was affirmed against the company.

*Nelson v. Inter-Ocean Casualty Company,*

103 Kans. 855; 176 Pac. Rep. 664; 53  
Ins. Law Jour. 260.

**Bruise—Carbuncle—Infection—Diabetes.**

The insured sustained a bruise which developed into a carbuncle. Infection followed causing death previously enjoyed good health. He had previously been advised, however, that he might be subject to diabetes. The physician who examined him shortly before his death testified that there were symptoms of diabetes at the time. *Held*, that the evidence was sufficient to show death was from external, violent and accidental means. Under the evidence it was more probable that the symptoms of diabetes were caused by the injury than that death resulted from that disease.

*Day v. Great Eastern Casualty Company*  
(Wash. S. C.),

177 Pac. Rep. 650; 53 Ins. Law Jour.  
368.

**Sudden enlargement of hernia.**

Mere proof of the sudden enlargement of a hernia was insufficient to raise the presumption

that the enlargement was caused by external, violent and accidental means.

*Transylvania Casualty Insurance Company v. Allan's Admr.* (Ky. C. A.),  
209 S. W. Rep. 44; 53 Ins. Law Jour.  
468.

**Strain pulling pipe out pump hole—Intestine injured—  
No accident.**

The policy insured death resulting directly and independently of all other causes from bodily injuries effected through external, violent and accidental means. On the day of the alleged accident, the insured was assisting another in pulling a pipe out of a pump hole. The insured took hold of the pipe and with his companion pulled on it. Insured was cautioned to pull slowly. While both men were pulling, the insured was heard to "give a kind of a grunt, but did not say anything then." That night, or the next morning, the insured was taken ill and from this illness died. His prior health had been good, except that about a year before, he had undergone an operation for appendicitis. After being taken from the hospital, on the occasion of his last illness, another operation was performed within the abdominal cavity and there was found "a band surrounding a portion of the small intestine." The insured died the fifth day thereafter. There was no evidence to show that the insured had slipped or lost his hold in lifting out the pipe, or was there anything to show that the entire transaction was not carried out in precisely the manner intended. *Held*, that this

evidence was insufficient to sustain the burden of proving death within the coverage of the policy.

*Bennetts v. Occidental Life Insurance Company* (Cal. D. C. A.),  
178 Pac. Rep. 964; 53 Ins. Law Jour.  
622.

**Hit by subway door—Cerebral hemorrhage—Arterio sclerosis.**

The policy insured death resulting directly and independently of all other causes, from bodily injury effected solely through external, violent or accidental means. The plaintiff alleged that the deceased came to his death as the result of a cerebral hemorrhage caused by his being struck by a closing car door on a subway train. It was established that at the time of the accident the deceased was suffering from arterio sclerosis, and that the disease was in an advanced state and extended throughout all parts of his body including his brain, and that death might have occurred at any time either with or without exertion. Evidence, that while in the dining room at dinner the insured was stricken, at which time he mumbled that he had been hit by a subway door, was held inadmissible as part of the *res gestae*, and the burden of proof rested on the plaintiff to establish the fact that the insured sustained an accident and that such accident was the sole cause of his death.

*Ætna Life Insurance Company v. Ryan*  
(U. S. C. C. A., 2nd Cir.),  
253 Fed. Rep. 483; 53 Ins. Law Jour.  
597.

**Fall—Hernia.**

There being evidence that the insured had no hernia or disability of any kind previous to the fall; that the hernia developed just after the fall; and that in the opinion of the doctors it was in all probability due to the fall; the jury were authorized in finding that the accident was the sole cause of the injury independent of all other causes.

*Metropolitan Casualty Insurance Company v. Edwards* (Texas C. C. A.),  
210 S. W. Rep. 856; 54 Ins. Law Jour.  
105.

**Fall down stairs—Head injured—Paralysis—Hardening of arteries—Cerebro hemorrhage.**

The insured fell headlong down a flight of stairs; he was sixty-one years old; he was badly hurt about the head and elsewhere; he complained particularly about the numbness of the right side of his head; paralysis soon attacked the left side of his body. His death occurred in a month after his fall; there was an autopsy and medical testimony to the effect that death was due to cerebro hemorrhage, caused by hardening of the arteries. One medical expert was of the opinion that the fall might have partly caused the maladies of the cerebro artery and brain tissues. *Held*, that under the evidence it was a question for the jury as to whether or not death was due to accident or disease, and that the evidence was sufficient to sustain the finding that death was due to accident.

*Jaques v. Order of United Commercial Travelers of America* (Kans. S. C.),

180 Pac. Rep. 200 ; 54 Ins. Law Jour. 111.

**Fall in bath room—Spine injured—Spine diseased.**

The policies involved provided for payment of stipulated sums if loss therein specified should result directly and exclusively from accidental injuries and insured shall have been continuously and totally disabled from performance of every kind of duty pertaining to his occupation from the date of such injury to the date of such loss. Insured conducted a general insurance business; his widow testified that while he was in the bath room she heard the noise of a fall; insured complained of soreness at the end of his spine; she rubbed him with some medicine she had at home; he never was well after this; he made efforts to get out but was never able to tend to his business like he should have been; after the date of the accident if he went to his office he would be all to pieces when he came home; most of the time his wife would take him in an auto to deliver policies; there was no change for the better in his condition from the time of his accident to his death; prior to the accident he was always well, an athlete and fond of games; there was testimony by the attending physician that he found a bruise at the end of the spine and was of the opinion that the fall received by the insured was responsible for his death. On the other hand there was evidence to the effect that the insured had a diseased condition of the spine and, furthermore, that from the

date of the alleged accident he appeared at his office for a considerable time as before and that there was no unusual results noticeable. It was apparent from the records of the office that he had not done nearly the amount of work that had previously been done. *Held*, that while the evidence would seem to preponderate in favor of the companies, there was sufficient evidence to take the case to the jury on the question of total disability and cause of death of the insured; and the judgment for plaintiff below was affirmed against the companies.

*Hartford Accident & Indemnity Company v. Davis;*

*United States Fidelity & Guaranty Company v. Davis* (Ky. C. A.),

210 S. W. Rep. 950; 54 Ins. Law Jour.  
101.

**Operation for appendicitis—Hernia—Operations for Hernia — Fall — Hernia — Peritonitis — Hernia sac existing before fall.**

The policy provided, "This insurance shall not cover injuries, fatal or non-fatal, resulting wholly or partly from disease in any form." Insured had undergone an operation for appendicitis, followed by the developing of a hernia, for the relief of which another operation was performed; after this a third operation became necessary for the removal of the threads which had been used to close the former wound. The attending physician testified that the insured did not have hernia after

the last mentioned operation; shortly before his death, however, the insured went to the doctor's office and the doctor found a "slight bulge of the wound"; it was the opinion of the physician, however, that there was weakness of the abdominal wall at the site of the incision. The insured fell; the day later the physician saw him and found him in bed very ill, vomiting and suffering great pain; on examination of the abdomen there was found considerable discoloration and protrusion, and an operation was ordered. A cut was made at the site of the former incision and it was found that five or six feet of the intestines protruded through the opening in the abdominal wall; there was discoloration; the protruding part was surrounded by dark fluid and there was evidence of the beginning of peritonitis. The physician testified that in his opinion the fall caused the intestine to be forced through the weak spot in the abdominal wall. Other medical experts gave it as their opinion that there must have been a hernia sac existing before the time of the accident and that the fall alone could not have produced the result observed at the time of the last operation without the previous existence of a pathological condition. *Held*, that the verdict of the jury in favor of the defendant was sustained by the evidence.

*Kellner v. Travelers' Insurance Company* (Cal. S. C.),

181 Pac. Rep. 61; 54 Ins. Law Jour.  
207.

**Punctured with hypodermic needle—Arm infected—Blood poisoning.**

The evidence was to the effect that the insured called his daughter to his room where he lay upon a bed with one of his arms exposed, and directed the daughter to insert a hypodermic needle in his arm; this she did. This needle was one which had been furnished by a doctor who had treated the insured's wife for cancer, some two years before. Blood poisoning developed, causing insured's death. *Held*, that death so resulting was not from accidental means; the fact that the insured did not contemplate the result reached does not alter the character of the fact.

*Townsend v. Commercial Travelers' Mutual Accident Association of America*  
(N. Y. App. Div.),  
177 N. Y. Supp. 268; 188 App. Div.  
370; 54 Ins. Law Jour. 369.

Reversed:

Septic poisoning as result of use of hypodermic needle is accidental.

*Townsend v. Commercial Travelers' Mutual Accident Association of America*  
(N. Y. Ct. of App.),  
231 N. Y. 148; 131 N. E. Rep. 871; 58  
Ins. Law Jour. 490.

**Accident—Hernia.**

An accident policy provided for payment of a certain sum in event of the death of insured on account of bodily injuries accidentally sustained.

There was also a declaration that if the injury should be hernia the liability was limited to \$50. The insured met with an accident which caused a hernia of which, within a short while, he died. In an action by the beneficiary it was *Held*, that the beneficiary is entitled to recover the full amount under the policy, as the hernia was the result of the accident and the cause of insured's death was the accident itself and not the hernia.

*Hanna v. Interstate Business Men's Accident Association of Des Moines*  
(Calif. D. C. A.),

182 Pac. Rep. 771; 54 Ins. Law Jour.  
469.

**Oranges eatened—Gastritis.**

Where insured, who was employed to select and separate unmarketable from marketable oranges, ate three of them, resulting in gastritis, which shortly caused his death, the death was not by "accidental means" within the provisions of the policy, although the result was accidental.

*Martin v. Interstate Business Men's Accident Association* (Iowa S. C.),  
174 N. W. Rep. 577; 55 Ins. Law Jour.  
36.

**Injured while on duty as mail clerk—Venereal disease.**

In an action against a fraternal benefit insurer, where the insurer claimed that death was the result of the effects of venereal disease, the beneficiary claimed death was the result of an accident to insured, who was a railroad mail clerk and

received an alleged injury while in the line of duty, testimony of the members of the family, friends and neighbors as to his appearance before the accident and as to the appearance of the body after the accident was admissible to show that the member was not afflicted with disease, at least to the extent that it impaired his health or vigor, and the evidence *Held* sufficient to warrant finding that member met his death as result of accident and that death was not caused by disease.

*Railway Mail Association v. Johnson*  
(Ark. S. C.),  
215 S. W. Rep. 682; 55 Ins. Law Jour.  
89.

**Fall of timber on insured—Hernia—Accident.**

In an action upon an accident policy based upon the fall of a timber upon insured while he was helping to unload it into a car, producing a double inguinal hernia, necessitating an operation, proof *Held* to make a case of accidental injury, and not a case within a policy provision for special disability indemnity from illness after the policy had been in force 90 days.

*Ivanescovich v. North American Life & Casualty Company* (Minn. S. C.),  
176 N. W. Rep. 502; 55 Ins. Law Jour.  
504.

**Barrel of beer fell on insured—Death—Pneumonia—Congestion of lungs.**

In an action on a policy insuring “against loss resulting directly, exclusively, and independently of all other causes from bodily injury sustained

\* \* \* solely through external, violent and accidental means," proof that a barrel of beer fell on insured, that he became sick, was put to bed, and on the following day was taken to a hospital, where he died six weeks later, warrants the inference that the accident caused death, but was overcome by positive evidence produced by insurer that the immediate cause of death was pneumonia, followed by congestion of the lungs, such evidence shifting the burden on plaintiff to produce evidence tending to show that the congestion of the lungs was caused and could be caused by the accident, insurer, in the absence of such evidence, being entitled to a direct verdict.

*Koprivica v. Standard Accident Insurance Company* (Mo. C. A.),  
218 S. W. Rep. 689; 55 Ins. Law Jour.  
507.

#### Fall on staircase—Cirrhosis of the liver.

In an action on policy insuring against death from accidental injury "independently of all other causes," there being evidence that insured had been afflicted prior to his death with cirrhosis of the liver, and that seventeen days before his death he had suffered a fall on a staircase, which was claimed to have caused his death, the issue whether his death was caused by an accidental injury independent of all other causes *Held* for the jury. The judgment of the court below, for plaintiff, was affirmed by divided court.

*Abbott v. Travelers' Insurance Company*  
(Mich. S. C.),

176 N. W. Rep. 473; 55 Ins. Law Jour.  
512.

*Abbott v. Fidelity & Casualty Company*  
(Mich. S. C.),  
176 N. W. Rep. 481.

**Rubbed head with infected towel—Infection through abrasion—Blood poisoning.**

The death of insured from blood poisoning from an infected abrasion caused by rubbing his head, which was bald, with an infected towel, *Held*, such death was caused by "accidental means," within the terms of the policy, in the absence of evidence that he knew of the infected condition of the towel when he used it.

*Business Men's Accident Association of America v. Schiefelbusch* (U. S. C. C. A., Oklahoma),  
262 Fed. Rep. 354; 55 Ins. Law Jour.  
635.

**Dental treatment—Virulent germs introduced in system from instruments—Blood poisoning.**

Where insured voluntarily underwent a dental operation, and the dentist unintentionally introduced into insured's system virulent germs contained on what he supposed were clean and aseptic instruments, resulting in blood poisoning and the death of the insured, death was effected "directly and independently of all other causes,

through external, violent and accidental means" within the meaning of an accident policy.

*Horton v. Travelers Insurance Company*  
(Cal. D. C. A.),

187 Pac. Rep. 1070; 55 Ins. Law Jour.  
638.

#### Fall—Back injured—Consumption.

In an action on a benefit certificate, if there was enough to take to the jury the question whether the fall caused the death, it was error to direct a verdict for defendant, though defendant adduced testimony of physicians that the death was due to consumption.

Where a benefit certificate insured against death due to a fall, but not against death from disease, and there was evidence that, though insured had not been well for years, he was in better condition at the time of the fall than for a long time prior thereto, and needed no help to get out of bed, and walked without assistance, and had never complained of his back, and that after the fall he could not get out of bed or walk without help, and had constant pain in his back, and that there was a bruise on the back close to the spine, and a misalignment of the lumbar vertebrae, it was a question for the jury whether death was due to the fall.

Where something appears that can have caused a death, and other adequate cause for it is not made to appear, it may be found that the cause

appearing to which the death might be due was the cause of it.

*Cummings v. Railway Mail Association*  
(Iowa S. C.),  
177 N. W. Rep. 466; 56 Ins. Law Jour.  
213.

**Inference of wrench, strain or shock from lifting—  
Paralysis—Prior stroke of paralysis.**

If one suffered an accidental injury resulting in paralysis and death, the fact that he had had a prior stroke of paralysis would be no defense in an action on an accident policy, but the fact of the prior stroke and assured's predisposition thereto would be significant in its bearing upon whether there was an accidental injury or not.

It could not be inferred that, because insured in an accident policy was exhausted from his night's work as mail clerk, he suffered an accidental wrench, strain, or shock from lifting burdens he was accustomed to handle.

Where the evidence showed that insured either died from disease or from an accident, but not showing that accidental death was the cause rather than death from disease, in an action on an accident policy there was no question for the jury.

*Atherton v. Railway Mail Association*  
(Kansas City C. A., Mo.),  
221 S. W. Rep. 752; 56 Ins. Law Jour.  
361.

**Strain while playing golf—Ruptured cancerous tumor  
—Hemorrhage—Cirrhosis and cancerous tumor of  
the liver.**

Insured was afflicted with cirrhosis of the liver, and a cancerous tumor of the liver. The immediate cause of his death was hemorrhage resulting from a rupture of said cancerous tumor. It is alleged that while playing golf he attempted to make a stroke and was thrown off his balance by catching his foot in something so that he almost fell, but by a violent effort recovered his balance and continued the game. After the game he took his usual shower bath and went home with his son without making any complaint. The next morning he complained of distention of the stomach and following other troubles were discovered as noted above, when an autopsy was had after his death.

Where a policy governed by the California laws insured against loss resulting directly and independently of all other causes from bodily injuries effected solely by accidental means, death resulting from rupture caused by accidental strain is not "independently of all other causes," where a cancerous growth was ruptured and but for such growth the injury could not have occurred.

*Campbell v. Ætna Life Insurance Company of Hartford, Conn.* (Mo. S. C.), 222 S. W. Rep. 778; 56 Ins. Law Jour. 498.

**Surgical operation for hernia—Needle puncture of epigastric artery—Blood clot—Leg became gangrened—Leg amputated.**

Where a surgeon, in closing the incision after an operation on the insured for hernia, punctured the deep epigastric artery with his needle, owing to the fact that such artery was not where it should be in normal persons, and as a result a blood clot formed in the artery which passed into the artery supplying a leg, the leg became gangrened and was amputated, the injury *Held* to have been "effected solely through external, violent and accidental means," within the terms of the policy. The hernia was not a cause which produced or contributed to the pricking or puncturing of the artery but a condition which exposed insured to that possibility.

*Etna Life Insurance Company v. Brand*  
(U. S. C. C. A., New York),  
265 Fed. Rep. 6; 56 Ins. Law Jour. 496.

**Tooth extracted—Gum injured—Injury port of entry for bacteria—Blood poisoning.**

Death through injury to gum, caused by pulling of a tooth which made port of entry for bacteria in circulatory system and directly resulted in blood poisoning was not within a policy insuring against "bodily injury through accidental means exclusive of all other causes," and the beneficiary's complaint alleging such facts, was demurable.

*Ramsey v. Fidelity & Casualty Company*  
(Tenn. S. C.),

223 S. W. Rep. 841; 56 Ins. Law Jour.  
592.

**Gas escaped in sleeping room—Asphyxiation—Sickness or accident.**

A provision in a sickness and accident policy that "disability or loss" resulting from gas should be classified and treated as sickness insurance, *Held*, to refer to loss of time, and not to loss of life, and recovery could be had under the accident portion of the policy for the principal sum, where insured was accidentally asphyxiated by the escape of gas in her sleeping room.

*Breen v. Great Western Accident Insurance Company* (Iowa S. C.),  
179 N. W. Rep. 931; 57 Ins. Law Jour.  
170.

**Bruises on stomach—Peritonitis—Blow on stomach.**

In an action on an insurance policy the evidence was that insured, who, preceding his death, was a railway mail clerk in the service of the government; that on June 15, 1916, he was in perfect health, and left the city in the course of his employment; that he traveled between St. Louis and Nashville; that when he returned on the 17th of June following, he was complaining of his stomach; that his wife made an examination and found his stomach was black and blue with bruises all across the front; that he went to work on the 18th; that he was due back on the 20th, but came back on the 19th; that when he came home he was

screaming with pain, and his wife called two doctors; that he was taken to a hospital, where he died on the 21st; that the deceased was 29 years old and weighed about 190 pounds, and was in good health prior to his last illness. One of the doctors testified that he found insured suffering with peritonitis; that his abdomen was swollen, his pulse about 120, and his skin moist and clammy; that he made an examination of his stomach and sent him to the hospital; that when he opened the abdomen it contained a large quantity of serum and pus, bowels over whole region of abdomen swollen, cyanotic, and in places showing beginning of degeneration. He stated that this condition could be caused by a strangulated bowel, a blood clot, or interdisposition, but he found none of these conditions present, and when asked the question, "Could that condition that you found there be caused by a blow on the stomach?" he answered: "That is the most frequent cause of it;" that this condition was due to injury; that the mark upon the abdomen was about one-half inch wide and three or four inches long, and was caused from external violence. The other doctor, in answer to hypothetical question, answered, that insured died from general peritonitis, or blood poisoning of the whole stomach, and that this could not have been caused by anything but a blow from the outside. It was held that a verdict could be rendered to the effect that the general peritonitis was in point of fact caused by external violence and was accidental, and not self-inflicted without predicating an inference upon

another inference, in view of the presumption of law that the insured did not voluntarily inflict an injury upon himself.

*Merkel v. Railway Mail Association* (St. Louis Ct. of App., Missouri),  
226 S. W. Rep. 299; 57 Ins. Law Jour.  
260.

**Automobile accident—Overdose of morphine—Bright's disease.**

Evidence considered, that it was held that an automobile accident was the sole cause of insured's death, and that death was not caused by an overdose of morphine or by Bright's disease.

*O'Brion v. Columbian National Life Insurance Company* (Maine S. C.),  
109 Atl. Rep. 379; 55 Ins. Law Jour.  
655.

**Abrasions—Infection—Erysipelas.**

The insured, a physician, died from erysipelas, the germs of which, as alleged by plaintiff, entered his body through a scratch or abrasion of the skin of his right ear received while adjusting his glasses following his treatment of a patient suffering from the disease.

Where the evidence shows that the infection occurred either at the time of the accidental wound is received or that it has followed as an actual and ordinary consequence, the death which may ensue from such injury and infection can

properly be accounted as accidental within the meaning of the terms of the policy.

If one who has knowingly sustained an accidental injury or abrasion upon the exposed surface of his body, nevertheless continues to bring himself in contact with and to treat a patient affected with a virulent type of contagious disease, such as is capable of being transmitted through immediate proximity with such exposed wound or abrasion and as the result of such voluntary risk, he thus becomes infected with and contracts the disease and it results in his death, the proximate cause thereof cannot properly be said to be the original "bodily injury sustained and effected through direct external, violent and accidental means exclusive and independently of all other causes." Judgment in favor of company affirmed.

*Bell v. State Life Insurance Company of Indianapolis* (Ga. C. A.),

101 S. E. Rep. 541; 55 Ins. Law Jour.  
281.

Affirmed: 105 S. E. Rep. 846.

#### **Eating decomposed ice cream—Ptomaine poisoning.**

Death from ptomaine poisoning through eating decomposed ice cream or other food created a liability of an accident insurer under its policy providing for payment to the beneficiary, if deceased died of injuries effected directly and independ-

ently of all other causes through accidental means.

*O'Connor v. Columbian National Life Insurance Company* (St. Louis Ct. of App., Missouri),  
232 S. W. Rep. 218; 58 Ins. Law Jour. 475.

**Bruise—Fall down stairway—Arterio sclerosis—Cerebral hemorrhage.**

Where one insured under an accident policy was in a diseased condition, and cerebral hemorrhage took place immediately prior to his death, it was not proper to build up the inference of a fall from the fact of a bruise the further inference that such fall was the result of accident rather than disease, and that such fall was the proximate cause of insured's death.

Circumstances attending insured's fall down a stairway did not prove his death the result of accident, where the advanced stage of the sclerotic condition of his arteries, evidence of cerebral hemorrhage causing death, and lack of evidence of any external violence causing injury to skull or brain covering arguing strongly that his fall was caused by disease.

In a suit on an accident policy, where there was no substantial evidence to establish that insured fell, that such fall was accidental, and that it or the efforts to avert it caused his death, there was no issue for the jury.

*Phillips v. Travelers Insurance Company*  
(Mo. S. C.),

231 S. W. Rep. 947; 58 Ins. Law Jour.  
479.

**Mashed finger—Blood poisoning—Diabetes.**

On June 7, 1919, plaintiff was accidentally injured by mashing the third finger of his right hand in turning a wagon, while laboring at concrete work; he attempted to work for two or three days thereafter, but was unable and on the 10th his physician lanced the injured finger and removed a great deal of pus therefrom, and thereafter plaintiff suffered from blood poisoning and in September his physician discovered that plaintiff was afflicted with diabetes. Defendant refuses to accept the theory that the diabetes from which plaintiff admittedly suffered was the direct result of the injury to the finger received on June 7.

*Held*, if the diabetes was an effect of insured's accidental injury, a mere link in the chain between the accident and its effect, the condition of insured would be attributable to the accidental injury, and not the disease. (Judgment in favor of plaintiff, affirmed in favor of administrator for plaintiff.)

*Anderson v. Mutual Benefit Health & Accident Association* (Kansas City Ct. of App., Missouri),  
231 S. W. Rep. 75; 58 Ins. Law Jour.  
238.

**Rubbed toe—Abrasion—Diabetic gangrene.**

Where an insurance policy provides that the in-

surance is against "injury effected solely through external, violent and accidental means," the plaintiff or complainant must prove to a reasonable certainty that the death or injury was so caused. It is not sufficient to prove a declaration made by the deceased to his physician that his injury was so caused. There must be affirmative proof as to how the injury occurred, and the proof must show it was accidental and caused through accidental means.

The suit was brought for the death of insured. His death was caused, according to the death certificate, by "diabetic gangrene, moist type, left foot, contributory diabetes melitis." It was contended by the beneficiary that the proximate cause of the death was an accident resulting in an abrasion of the skin on the toe of his left foot, which became infected thereafter and proximately caused the death of the deceased.

The Court, on appeal, held the proof insufficient to show that the injury was caused by an accident or through accidental means. The only testimony to establish the alleged accident is the statement of the deceased to his physician, who first treated the abrasion, that he thought the abrasion was caused by rubbing his toe with a towel. The physician had no knowledge of his own as to what caused the abrasion. When he was called to treat the abrasion, he found the toe slightly infected. While the statement of the deceased to his physician is admissible in evidence for the purpose of showing a basis of an opinion by the physician, and his opinion as to the injury and the extent of

the injury, it is not sufficient to prove the main fact of the accident. As to this, it is a mere self-serving statement. It has no probative value as to such fact. It further appears from his statement to his physician that, if the injury was caused by rubbing, the rubbing was voluntarily done, and this would not constitute an injury through accidental means. The proof is wholly insufficient to establish liability. Judgment of the Court below reversed.

*United States Casualty Company of New York v. Malone* (Mississippi S. C.),  
87 So. Rep. 896; 58 Ins. Law Jour. 116.  
*Travelers' Protective Association of America v. Malone* (Mississippi S. C.),  
87 So. Rep. 896; 58 Ins. Law Jour. 117.

**Accident—Weakened condition—Activity of pneumococcus germs—Pneumonia.**

The insurer is liable on an accident policy where the insured's death was not caused by an accidental contagion but from the activity of pneumococcus germs, such as are present in healthy persons, producing pneumonia because of insured's weakened condition resulting from his physical injury produced by the accident; the pneumonia being a link in the chain of causation and not an independent cause, and the injury being the proximate cause.

*Robinson v. National Life & Accident Insurance Company,*  
129 N. E. Rep. 707.

**Fall from window—Fainting or dizzy spells.**

A policy insuring against death effected directly and independently of all other causes by accidental means imposes liability on insurer where death resulted from a fall from a window caused by fainting or dizzy spells unless death would have resulted therefrom without the fall, since in such case the fall is the proximate cause of the death and was accidental.

*United States Fidelity & Casualty Company v. Blum* (U. S. C. C. A., Washington),

270 Fed. Rep. 946.

**Accident—Kidney disease.**

Where the policy excepted death or injury arising from disease, "although accelerated by accident," and it appeared that the insured had suffered from kidney disease, but had not been troubled therewith for a considerable time, and after an accident the disease returned and the insured died within three months, it was held that the insurer was not liable, as the death was within the exception as to disease accelerated by accident.

*Cawley v. National Employers Assurance Association,*  
1 Cab. & El., 597.

**Fall into a pit—Injuries resulted in pneumonia.**

Where insured, a railroad conductor, fell into a pit in a railroad yard and received injuries re-

sulting in pneumonia, from which he died, and the policy insured against injuries or death caused directly, independently and exclusively of all other causes by accidental means, and in an action thereon where the company seeks to avoid liability because, as it alleged, insured used intoxicating liquors to such an extent as to render himself less able to withstand disease, it was *Held*, that the use of the intoxicant was immaterial unless the facts warranted the conclusion that its use contributed to the loss, and where the evidence showed that insured was in perfect health at the time of his injury, it was proper to exclude evidence of his use of intoxicants.

*Fidelity & Casualty Company of New York v. Cooper et al.* (Ky. C. A.),  
137 Ky. 344; 126 S. W. Rep. 111; 39  
Ins. Law Jour. 787.

**Suicide—Insanity—Bodily infirmities or disease.**

The policy covered accidents which might happen to the insured through external, violent and accidental means, providing, however, that the insurance should not extend to any bodily injury happening in consequence of bodily infirmities or disease, and that no claim should be made where death was caused by suicide. *Held*, where the insured killed himself while insane, and not conscious of what he was doing, that such act was not suicide within the meaning of the policy, nor was it within the exception made in case of death

resulting from bodily disease, and that a recovery could be had on the policy.

*Blackstone v. Standard Life & Accident Insurance Company* (Mich. S. C.),  
74 Mich. 592; 42 N. W. Rep. 156; 39 Albany Law Jour. 449; 3 L. R. A. 486, and note; 17 Washington Law Rep. 475; 13 Virginia Law Jour. 553.

**Limb broken, proximate cause—Disease, secondary cause.**

Insurer is held liable where the accident can be considered as the proximate cause of death, although disease may have been present as a secondary cause, so that evidence that deceased broke his limb; that it turned black, and that the discoloration extended to the body, and that he was in great pain, is sufficient to sustain a finding that the injury was the proximate cause of death, though there was evidence that deceased was at times intemperate.

*Prader v. National Masonic Accident Association* (Iowa S. C.),  
95 Iowa 149; 63 N. W. Rep. 601.

**Accident—Hernia—Surgical operation.**

Where by one of the conditions of a policy of insurance against accidental death or injury it was provided that the policy insured against cuts, stabs, concussions, etc., "when accidentally occurring from material and external cause, where such accidental injury is the direct and sole cause of death to the insured, or disability to follow his

avocation," and then followed this exception: "but it does not insure against death or disability arising from rheumatism, gout, hernia, erysipelas, or any other disease or cause arising within the system of the insured before or at the time or following such accidental injury (whether causing death or disability directly or jointly with such accidental injury)"—it was *Held*, that death from hernia caused solely and directly by external violence, followed by a surgical operation performed for the purpose of relieving the patient, was not within the exception.

*Fitton v. Accidental Death Insurance Company,*  
17 Com. B. (N. S.) 122; 112 E. C. L.  
122; 34 L. J. Com. P. 28.

**Accident—Infection—Blood poisoning.**

Where insured sustains an injury through violent, external and accidental means, and blood poisoning sets in, finally resulting in death, it is immaterial whether the infection was introduced at the time of the accident or through the instrument operating to cause the injury, if the infection enters before the wound has become so cured as to prevent exposure to infection, and if the infection comes about naturally, without any apparent human act to produce it, and such blood poisoning will be considered as the effect of the injury, and not as an additional or other cause aside from the accident and the consequent death

is held to be the result of the accident exclusively and independently of other causes.

*Hornby v. State Life Insurance Company*  
(Nebraska S. C.),

184 N. W. Rep. 84; 58 Ins. Law Jour.  
598.

**Fall—Face and forehead scratched and bruised—  
Uraemic poisoning—Apoplexy, etc.**

It was shown that the insured, apparently in good health, returned from a walk with a bruise on his forehead and scratches on his face. The attending physician was unable to say definitely what was the cause of death, which occurred two days later, and the defendant produced evidence to the effect that the death resulted from uraemic poisoning. In an action on an accident policy, it was *Held*, that the trial court properly refused to permit the plaintiff to show that insured had said, fifteen minutes after the alleged accident, that he had fallen on loose stones in the path. The Court also said that it was as likely that the fall resulted from apoplexy or other disease as from accidental means, and that the jury should not be permitted to guess which.

*Keefer v. Pacific Mutual Life Insurance  
Company* (Pa. S. C.),  
201 Pa. 448; 51 Atl. Rep. 366.

**Cut or scratched finger on wire spring—Infection—  
Septicaemia or blood poisoning.**

The insured, a practising physician and surgeon, performed a surgical operation on one of

his patients; on the next day he examined and dressed the wound resulting from the operation; within a very few hours after, while moving an old and rusty bed spring, he slightly cut one of his fingers of his right hand by coming in contact with the end of one of the wires; during the following day he complained of not feeling well, and of having considerable pain in the right arm; his condition continued to grow worse, and a few days afterwards he was required to take to his bed, where he remained until his death about a week afterwards. He died of septicaemia or blood poisoning. Prior to cutting or scratching his finger he was in the best of health. The testimony of the experts and others was strongly to the effect that the inoculation of his finger with the germs, which caused the blood poisoning was coincident with the cutting of the finger, and the jury returned a special verdict, so finding.

*Rorabaugh v. Great Eastern Casualty Company* (Washington S. C.),  
200 Pac. Rep. 587; 58 Ins. Law Jour. 610.

#### **Poison of hand.**

The poisoning of fingers from dipping the hand in a solution in developing photographic plates, and which dipping occurred some 500 times a day, *Held not an accident.*

*Jeffreyes v. Charles H. Sager Co.* (N. Y. App. Div.),  
191 N. Y. Supp. 354; 198 App. Div. 446.

**Fall—Disease.**

If the insured was suffering from a disease, which was accelerated and aggravated by a fall constituting an accident, so as to be a cause operative with it to produce his death, the beneficiary cannot recover on the policy which insures only against death proximately caused by external, violent and accidental means.

If there is no active disease, but merely a frail general condition, so that powers of resistance are easily overcome, or merely a tendency to disease which is started up and made operative, whereby death results, then there may be recovery, even though the accident could not have caused that effect upon a healthy person in a normal state.

*Leland v. Order of United Commercial Travelers of America* (Mass. S. C.), 124 N. E. Rep. 517; 54 Ins. Law Jour. 652.

**Pulling on stocking—Colon fell out of place—Bowels slipped in front of liver, etc.**

A person who was insured against death from "bodily injuries caused by violent, accidental, external and visible means," had just arisen from his bed and was in the act of pulling on his stocking, when "he felt something give way on his inside," shortly afterwards he died. Examination of the insured showed that the colon of the deceased had fallen out of place and become folded, and the anterior body of the liver was be-

neath it, so that the bowels had slipped in front of the liver, which caused great pain and distension, and the resulting pressure on the heart was so great that its action stopped. *Held*, that the death was not the result of injury caused by violent, external, accidental and visible means.

*Clidero v. Scottish Accident Insurance Company* (Scot. Ct. Sessions),  
29 Scottish Law Rep. 303.

**Diving—Ruptured ear drum—Slight accidental turn of body.**

Where it appeared that the insured ruptured his ear drum while diving, which injury was accidental, although there was no evidence of accidental means, the Court said that under the circumstances the jury was justified in finding that there was a slight turn of the body.

*Rodey v. Travelers' Insurance Company*,  
3 N. Mex. 316; 9 Pac. Rep. 348.

**Convalescing from operation—Slipped—Jar detached and dislodged embolus.**

The insured, convalescing from an operation, slipped, causing a sudden jar which detached and dislodged an embolus or blood clot and resulted in death, for which the company was held liable under an accident policy.

*Pacific Mutual Life Insurance Company v. Meldrim* (Ga. C. A.),  
101 S. E. Rep. 305; 55 Ins. Law Jour.  
160.

## **TABLE OF CASES**



## TABLE OF CASES

### A

	Page
Abbott vs. Fidelity & Casualty Co. (Mich.).....	230
Abbott vs. Travelers' Ins. Co. (Mich.).....	230
Accidental Death Ins. Co. ads. Fitton.....	246
Accidental Ins. Co. ads. Lawrence (Canada).....	165
Accident Ins. Co. vs. Crandal (Fed.).....	174
Accident Ins. Co. ads. Crandal (Fed.).....	174
Accident Ins. Co. ads. Cronkhite (Fed.).....	202
Accident Ins. Co. ads. Mardorf (Eng.).....	54
Accident Ins. Co. ads. Smith (Canada).....	167
Accident Ins. Co. ads. Winspear (Canada).....	168
Accident Ins. Co. vs. Young (Canada).....	22
Accident Ins. Co. ads. Young (Canada).....	22
Aetna Life Ins. Co. ads. Appel (N. Y.).....	7
Aetna Life Ins. Co. vs. Bethel (Ky.).....	89
Aetna Life Ins. Co. vs. Brand (Fed.).....	234
Aetna Life Ins. Co. ads. Campbell (Mo.).....	233
Aetna Life Ins. Co. vs. Crabtree (Ky.).....	96
Aetna Life Ins. Co. vs. Dorney (Ohio).....	175
Aetna Life Ins. Co. vs. Fitzgerald (Ind.).....	67
Aetna Life Ins. Co. vs. Griffin (Texas).....	87
Aetna Life Ins. Co. vs. Hicks et al. (Texas).....	48
Aetna Life Ins. Co. vs. Lassater (Ala.).....	193
Aetna Life Ins. Co. ads. Potter (Wash.).....	104
Aetna Life Ins. Co. ads. Rheinheimer (Ohio).....	78
Aetna Life Ins. Co. vs. Ryan (Fed.).....	221
Aetna Life Ins. Co. ads. Strehlow (Ill.).....	193
Aetna Life Ins. Co. ads. Ward (Neb.).....	19-20
Aetna Life Ins. Co. vs. Wicker (Fed.).....	20
Alexander ads. Atlanta Acc. Ass'n (Ga.).....	160
Allan's Adm'r, etc. ads. Transylvania Cas. Ins. Co. (Ky.).....	220

	Page
American Acc. Co. vs. Fidler's Adm'x (Ky.).....	169
American Masonic Acc. Ass'n ads. Hall (Wis.).....	37
American Temperance Life Ins. Co. ads. Christy (N. Y.).....	187
Anderson vs. Great Eastern Cas. Co. (Utah).....	147
Anderson vs. Mutual Benefit Health & Acc. Ass'n (Mo.).....	240
Anderson et al. vs. Scottish Acc. Ins. Co. (Scotland).....	22
Appel vs. Aetna Life Ins. Co. (N. Y.).....	7
Ashelby vs. Travelers' Ins. Co. (Minn.).....	127
Atherton vs. Railway Mail Ass'n (Mo.).....	232
Atlanta Acc. Ass'n vs. Alexander (Ga.).....	160

**B**

Bacon vs. U. S. Mutual Acc. Ass'n (N. Y.).....	23-24
Bailey vs. Interstate Cas. Co. (N. Y.).....	183
Ballagh vs. Interstate Business Men's Acc. Ass'n (Iowa).....	178
Bankers' Acc. Ins. Co. ads. Kenny (Iowa).....	75
Bankers' Mutual Cas. Co. ads. Johnson (Minn.).....	194
Barry ads. U. S. Mutual Acc. Co. (Fed.).....	10
Beidelman ads. Preferred Mut. Acc. Ass'n (Pa.).....	182
Beile vs. Travelers' Protective Ass'n (Mo.).....	93
Bell vs. State Life Ins. Co. of Indianapolis (Ga.).....	238
Bellows vs. Travelers' Ins. Co. (Mo.).....	156
Bennetts vs. Occidental Life Ins. Co. (Cal.).....	221
Bernays vs. U. S. Mut. Acc. Ass'n of N. Y. (Fed.).....	183
Berry vs. Order of United Com'l Trav. of Am. (Iowa).....	122
Bethel ads. Aetna Life Ins. Co. (Ky.).....	89
Binder vs. Nat'l Masonic Acc. Ass'n (Iowa).....	60
Bingham ads. Travelers' Ins. Co. (Ky.).....	78
Bird ads. Interstate Cas. Co. (Ohio).....	46
Blackstone vs. Standard Life & Acc. Ins. Co. (Mich.).....	245
Blum ads. U. S. Fid. & Cas. Co. (Fed.).....	243
Bohaker vs. Travelers' Ins. Co. (Mass.).....	111
Bosworth ads. International Trav. Ass'n (Texas).....	210
Brand ads. Aetna Life Ins. Co. (Fed.).....	234
Branum ads. International Trav. Ass'n (Texas).....	116
Breen vs. Great Western Acc. Ins. Co. (Iowa).....	235
Brinsmaid vs. Order of United Com'l Trav. of Am. (Iowa).....	201
Broom ads. Standard Acc. Ins. Co. (Miss.).....	133
Bryant et al. vs. Continental Cas. Co. (Texas).....	25-26

	Page
Budde vs. Nat'l Trav. Benefit Ass'n (Iowa).....	218
Burnham vs. Interstate Cas. Co. of N. Y. (Mich.).....	175
Burroughs vs. North American Life & Acc. Co. (Pa.).....	163
Business Men's Acc. Ass'n ads. Pledger (Texas).....	144-145
Business Men's Acc. Ass'n vs. Schiefelbusch (Fed.).....	230

## C

Caldwell vs. Iowa State Trav. Men's Ass'n (Iowa).....	103
Campbell vs. Aetna Life Ins. Co. (Mo.).....	233
Carr vs. Pacific Mut. Life Ins. Co. (Mo.).....	54
Carroll et al. vs. Fidelity & Cas. Co. (Fed.).....	64
Cary vs. Preferred Acc. Ins. Co. (Wis.).....	68
Casualty Co. of America ads. Collins (Mass.).....	133
Casualty Co. of America ads. McAuley (Mont.).....	81-82
Cawley vs. Nat'l Assur. Ass'n.....	243
Central Acc. Ins. Co. vs. Rembe (Ill.).....	161
Christy vs. American Temperance Life Ins. Co. (N. Y.).....	187
Church vs. Fidelity & Dep. Co. of M'd. (Cal.).....	146
Clark ads. Continental Cas. Co. (Okla.).....	30
Clark vs. Employers' Liability Assur. Co. (Vt.).....	51
Clarke vs. New Amsterdam Cas. Co. (Cal.).....	16-18
Clidero vs. Scottish Acc. Ins. Co. (Scotland).....	250
Coady ads. Railway Officials' & Employes' Acc. Ass'n (Ill.) ..	44
Cobb vs. Preferred Mut. Acc. Ass'n (Ga.).....	162
Collins vs. Casualty Co. of America (Mass.).....	133
Columbian Nat'l Life Ins. Co. vs. Miller (Ga.).....	111
Columbian Nat'l Life Ins. Co. ads. O'Brion (Me.).....	237
Columbian Nat'l Life Ins. Co. ads. O'Connor (Mo.).....	239
Columbian Nat'l Life Ins. Co. ads. Thompson (Me.).....	121
Columbia Paper Stock Co. vs. Fidelity Cas. Co. (Mo.).....	157
Colvin ads. Continental Cas. Co. (Kans.).....	80
Commercial Trav. Eastern Acc. Ass'n ads. Noyes (Mass.)....	65
Commercial Trav. Eastern Acc. Ass'n ads. Page (Mass.)....	138
Commercial Trav. Eastern Acc. Ass'n ads. Traiser (Mass.)...	192
Commercial Trav. Mut. Acc. Ass'n of Am. vs. Fulton (Fed.).....	41-42
Commercial Trav. Mut. Acc. Ass'n of Am. vs. Sharpe (Ind.)..	38
Commercial Trav. Mut. Acc. Ass'n of Am. ads. Skinner (Mich.) .. . . . .	130

	Page
Commercial Trav. Mut. Acc. Ass'n of Am. ads. Thurber (N. Y.) .....	48-50
Commercial Trav. Mut. Acc. Ass'n of Am. ads. Townsend (N. Y.) .....	226
Commonwealth Cas. Co. ads. Jones (Pa.).....	124-125
Conrad vs. Interstate Life & Acc. Ins. Co. (Tenn.).....	216
Continental Cas. Co. ads. Bryant et al. (Texas).....	25-26
Continental Cas. Co. vs. Clark (Okla.).....	30
Continental Cas. Co. vs. Colvin (Kans.).....	80
Continental Cas. Co. ads. Crandall (Ill.).....	173
Continental Cas. Co. ads. Crotty (Mo.).....	102
Continental Cas. Co. ads. Franklin (Ill.).....	112
Continental Cas. Co. ads. Huguenin (S. C.).....	107
Continental Cas. Co. vs. Hunt (Ky.).....	186
Continental Cas. Co. vs. Johnson (Kans.).....	31
Continental Cas. Co. ads. Johnson (Mo.).....	72
Continental Cas. Co. ads. Keen (Iowa).....	140
Continental Cas. Co. vs. Matthys (Ky.).....	192
Continental Cas. Co. vs. Peltier (Va.).....	63
Continental Cas. Co. vs. Pittman (Ga.).....	28
Continental Cas. Co. ads. Semancik (Pa.).....	27
Continental Cas. Co. vs. Semple (Ky.).....	83
Continental Ins. Co. vs. Lloyd (Ind.).....	15
Cooper et al. ads. Fid. & Cas. Co. of N. Y. (Ky.).....	244
Coulter vs. Travelers' Protective Ass'n of Am. (Ill.).....	170
Cox ads. Nat'l Life & Acc. Ins. Co. (Ky.).....	141
Crabtree ads. Aetna Life Ins. Co. (Ky.).....	96
Crandal vs. Accident Ins. Co. (Fed.).....	174
Crandall ads. Accident Ins. Co. (Fed.).....	174
Crandall vs. Continental Cas. Co. (Ill.).....	173
Cronkhite vs. Accident Ins. Co. of N. A. (Fed.).....	202
Crotty vs. Continental Cas. Co. (Mo.).....	102
Crown Accidental Ins. Co. ads. Hamlyn (Eng.).....	203
Cummings vs. Railway Mail Ass'n (Iowa).....	232
<b>D</b>	
Dabbert vs. Travelers' Ins. Co. (Ohio).....	168
Davies ads. Travelers' Ins. Co. (Ky.).....	107
Davis ads. Hartford Acc. & Ind. Co. (Ky.).....	224

	Page
Davis ads. U. S. Fid. & Guar. Co. (Ky.).....	224
Day vs. Great Eastern Cas. Co. (Wash.).....	219
Delaney vs. Modern Acc. Club (Iowa).....	55
Despain vs. Pacific Mut. Life Ins. Co. (Kans.).....	200
Despain ads. Pacific Mut. Life Ins. Co. (Kans.).....	200
Dent vs. Railway Mail Ass'n (Fed.).....	177
Dent ads. Railway Mail Ass'n (Fed.).....	177
Dobbs ads. Order of United Com'l Trav. of Am. (Texas).....	156
Dorgan ads. Manufacturers' Acc. Ind. Co. (Fed.).....	36
Dorney ads. Aetna Life Ins. Co. (Ohio).....	175
Dozier vs. Fid. & Cas. Co. (Fed.).....	25
Driskell vs. U. S. Health & Acc. Ins. Co. (Mo.).....	14
Duncan ads. Massachusetts Bond. & Ins. Co. (Ky.).....	123

**E**

Edwards ads. Metropolitan Cas. Ins. Co. (Texas).....	222
Elsey vs. Fid. & Cas. Co. (Ind.).....	30-31
Empire Life Ins. Co. vs. Gee (Ala.).....	197
Employers' Liability Assur. Co. ads. Clark (Vt.).....	51
Equitable Acc. Ass'n ads. Martin (N. Y.).....	34
Equitable Acc. Ass'n ads. Peck (N. Y.).....	21
Equitable Acc. Ass'n ads. Reynolds (N. Y.).....	181
Equitable Mut. Acc. Ass'n vs. McCluskey (Colo.).....	8
Etherington vs. Lancashire & Yorkshire Acc. Ins. Co. (Eng.)	85

**F**

Farner v. Massachusetts Mut. Acc. Ins. Ass'n (Pa.).....	76
Feder et al. vs. Iowa State Trav. Men's Ass'n (Iowa).....	43
Fetter v. Fid. & Cas. Co. (Mo.).....	15
Fid. & Cas. Co. ads. Abbott (Mich.).....	230
Fid. & Cas. Co. ads. Carroll et al. (Fed.).....	64
Fid. & Cas. Co. ads. Columbian Paper Stock Co. (Mo.).....	157
Fid. & Cas. Co. vs. Cooper et al. (Ky.).....	244
Fid. & Cas. Co. ads. Dozier (Fed.).....	25
Fid. & Cas. Co. ads. Elsey (Ind.).....	30-31
Fid. & Cas. Co. ads. Fetter (Mo.).....	15
Fid. & Cas. Co. ads. French (Wis.).....	79
Fid. & Cas. Co. ads. Gallagher (N. Y.).....	3
Fid. & Cas. Co. ads. Hanley (Iowa).....	139

	Page
Fid. & Cas. Co. ads. Johnson (Mich.).....	191
Fid. & Cas. Co. vs. Meyer (Ark.).....	105
Fid. & Cas. Co. ads. Meyer (Iowa).....	39
Fid. & Cas. Co. ads. McGlinchey (Me.).....	1
Fid. & Cas. Co. ads. Miller (Fed.).....	176
Fid. & Cas. Co. vs. Mitchell (Eng.).....	144
Fid. & Cas. Co. ads. Ramsey (Tenn.).....	234
Fid. & Cas. Co. ads. Salinger (Ky.).....	148
Fid. & Cas. Co. ads. Shanberg (Fed.).....	69
Fid. & Cas. Co. vs. Stacey's Executors (Fed.).....	65
Fid. & Cas. Co. ads. Stokely (Ala.).....	120
Fid. & Cas. Co. ads. Stone (Tenn.).....	129
Fid. & Cas. Co. ads. Thomas (Md.).....	74
Fid. & Cas. Co. vs. Thompson (Fed.).....	177
Fid. & Dep. Co. of M'd ads. Church (Cal.).....	146
Fid. Mut. Aid Ass'n ads. Summers (Mo.).....	160
Fidlers' Admrx. ads. American Acc. Co. (Ky.).....	169
Finucane vs. Standard Acc. Ins. Co. (N. Y.).....	4
First Texas State Ins. Co. vs. Jones (Texas).....	198
Fitton vs. Accidental Death Ins. Co. ....	246
Fitzgerald ads. Aetna Life Ins. Co. (Ind.).....	67
Flint vs. Travelers' Ins. Co. (Texas).....	204
Franklin vs. Continental Cas. Co. (Ill.).....	112
Freeman vs. Loyal Protective Ins. Co. (Mo.).....	214
Freeman vs. Mercantile Mut. Acc. Ass'n (Mass.).....	9
French vs. Fid. & Cas. Co. (Wis.).....	79
Fulton ads. Com'l Trav. Mut. Acc. Ass'n of Am. (Fed.)....	41-42

**G**

Gallagher vs. Fid. & Cas. Co. (N. Y.).....	3
Garvey vs. Phoenix Pref'd Acc. Ins. Co. (N. Y.).....	2
Gee ads. Empire Life Ins. Co. (Ala.).....	197
General Acc. Assur. Corp'n ads. Hall (Ga.).....	119
General Acc. Assur. Corp'n ads. Scarr (Eng.).....	62
General Acc. Assur. Corp'n ads. Taylor (Pa.).....	58
General Acc., Fire & Life Assur. Co. vs. Homely (Md.).....	208
General Acc., Fire & Life Assur. Co. vs. Meredith (Ky.).....	190
General Acc., Fire & Life Assur. Co. ads. Moore (N. C.)....	179
General Acc., Fire & Life Assur. Co. vs. Murray (Va.).....	136

	Page
General Acc., Fire & Life Assur. Co. vs. Richardson (Ky.)	114
Gerish ads. Globe Acc. Ins. Co. (Ill.)	171
Glass ads. Maryland Cas. Co. (Texas)	52
Globe Acc. Ins. Co. vs. Gerish (Ill.)	171
Goodes vs. Order of United Com'l Trav. of Am. (Mo.)	108
Great Eastern Cas. Co. ads. Anderson (Utah)	147
Great Eastern Cas. Co. ads. Day (Wash.)	219
Great Eastern Cas. Co. ads. Rorabaugh (Wash.)	248
Great Eastern Cas. Co. ads. Schwindermann (N. D.)	148
Great Western Acc. Ass'n ads. Lehman (Iowa)	94
Great Western Acc. Ins. Ass'n ads. Breen (Iowa)	235
Greenlee vs. Kansas City Cas. Co. (Mo.)	128
Griffin ads. Aetna Life Ins. Co. (Texas)	87
Griffis ads. U. S. Cas. Co. (Ind.)	136

**H**

Hall vs. American Masonic Acc. Ass'n (Wis.)	37
Hall vs. General Acc. Assur. Corp'n Ltd. (Ga.)	119
Hall vs. Western Trav. Acc. Ass'n (Neb.)	207
Hamlyn vs. The Crown Acc. Ins. Co. (Eng.)	203
Hanley vs. Fid. & Cas. Co. (Iowa)	139
Hanna vs. Interstate Business Men's Acc. Ass'n (Cal.)	227
Harrington ads. Railway Mail Ass'n (Fed.)	213
Hartford Acc. & Ind. Co. ads. Rich (Ill.)	147
Hartford Acc. & Ind. Co. vs. Davis (Ky.)	224
Harvey ads. Travelers Ins. Co. (Va.)	162
Hatfield vs. Iowa State Trav. Men's Ass'n (Iowa)	139
Hatfield vs. Travelers' Protective Ass'n (Iowa)	139
Hawkeye Com'l Men's Ass'n ads. Jenkins (Iowa)	167
Hawkeye Com'l Men's Ass'n ads. Simpkins (Iowa)	166
Herdic vs. Maryland Cas. Co. (Fed.)	71
Hickey vs. Ministers' Cas. Union (Minn.)	134
Hicks et al. ads. Aetna Life Ins. Co. (Texas)	48
Higgins vs. Midland Cas. Co. (Ill.)	28
Hills Adm'x vs. North American Acc. Ins. Co. (Ky.)	217
Hills Adm'x ads. North American Acc. Ins. Co. (Ky.)	216
Hilts vs. U. S. Cas. Co. (Mo.)	172
Homely ads. General Acc., Fire & Life Assur. Co. (Md.)	208

	Page
Hood (H. P.) & Sons Inc. vs. Maryland Cas. Co. (Mass.).....	88
Hooper vs. Standard Life & Acc. Ins. Co. (Mo.).....	103
Hornby vs. State Life Ins. Co. (Neb.).....	247
Horsfall vs. Pacific Mut. Life Ins. Co. (Wash.).....	184
Horton vs. Travelers' Ins. Co. (Cal.).....	231
Hubbard vs. Mut. Acc. Ass'n (Fed.).....	47
Hubbard vs. Travelers' Ins. Co. (Fed.).....	47
Hudgins ads. Maryland Cas. Co. (Texas).....	164
Huguenin vs. Continental Cas. Co. (S. C.).....	107
Hummer vs. Midland Cas. Co. (Mich.).....	178
Hunt ads. Continental Cas. Co. (Ky.).....	186
Hunter ads. Travelers' Ins. Co. (Texas).....	53

**I**

Illinois Com'l Men's Ass'n ads. Martin (Ill.).....	126
Illinois Com'l Men's Ass'n ads. McCormack et al. (Fed.).....	196
Illinois Com'l Men's Ass'n vs. Parks (Fed.).....	209
Indiana Trav. Acc. Ass'n ads. Schmid (Ind.).....	84
Industrial Ins. Co. ads. Zappala (Wash.).....	117
Internat'l Trav. Ass'n vs. Bosworth (Texas).....	210
Internat'l Trav. Ass'n vs. Branum (Texas).....	116
Inter-Ocean Cas. Co. ads. Nelson (Kans.).....	219
Interstate Business Men's Acc. Ass'n ads. Ballagh (Iowa)....	178
Interstate Business Men's Ass'n ads. Hanna (Cal.).....	227
Interstate Business Men's Acc. Ass'n ads. Layton (Iowa)....	106
Interstate Business Men's Acc. Ass'n vs. Lewis (Fed.).....	155
Interstate Business Men's Acc. Ass'n ads. Martin (Iowa)....	227
Interstate Cas. Co. ads. Bailey (N. Y.).....	183
Interstate Cas. Co. vs. Bird (Ohio).....	46
Interstate Cas. Co. ads. Burnham (Mich.).....	175
Interstate Cas. Co. ads. Kasten (Wis.).....	205
Interstate Cas. Co. ads. Larkin (N. Y.).....	46
Interstate Life & Acc. Ins. Co. ads. Conrad (Tenn.).....	216
Iowa State Trav. Men's Ass'n ads. Caldwell (Iowa).....	103
Iowa State Trav. Men's Ass'n ads. Feder et al. (Iowa).....	43
Iowa State Trav. Men's Ass'n ads. Hatfield (Iowa).....	139
Iowa State Trav. Men's Ass'n ads. Lewis (Fed.).....	153-154
Iowa State Trav. Men's Ass'n ads. Lickleider (Iowa)....	151-153

	Page
Iowa State Trav. Men's Ass'n ads. Smouse (Iowa).....	53
Iowa State Trav. Men's Ass'n ads. Vernon (Iowa).....	171
Isitt et al. vs. Railway Passenger Assur. Co. (Eng.).....	203
Ivanesovich vs. North American Life & Cas. Co. (Minn.)....	228

**J**

Jaques vs. Order of United Com'l Trav. of Am. (Kans.)....	222
Jeffreyes v. Charles H. Sager Co. (N. Y.).....	248
Jenkins vs. Hawkeye Com'l Men's Ass'n (Iowa).....	167
Jiroch vs. Travelers' Ins. Co. (Mich.).....	70
Johnson vs. Bankers' Mut. Cas. Co. (Minn.).....	194
Johnson ads. Continental Cas. Co. (Kans.).....	31
Johnson vs. Continental Cas. Co. (Mo.).....	72
Johnson vs. Fid. & Cas. Co. (Mich.).....	191
Johnson ads. New Amsterdam Cas. Co. (Ohio).....	123, 124
Johnson ads. Railway Mail Ass'n (Ark.).....	228
Johnson ads. Railway Off. & Emp. Acc. Ass'n (Ky.).....	32
Jones vs. Commonwealth Cas. Co. (Pa.).....	124, 125
Jones ads. First Texas State Ins. Co. (Texas).....	198
Jones vs. Pennsylvania Cas. Co. (N. C.).....	67
Jordan ads. Knickerbocker Cas. Co. (Ohio).....	161

**K**

Kaneft vs. Mut. Benefit Health & Acc. Ass'n (Neb.).....	215
Kansas City Cas. Co. ads. Greenlee (Mo.).....	128
Kasten vs. Interstate Cas. Co. (Wis.).....	205
Keefer vs. Pacific Mut. Life Ins. Co. (Pa.).....	247
Keen vs. Continental Cas. Co. (Iowa).....	140
Kelley vs. Pittsburgh Cas. Co. (Pa.).....	142
Kellner vs. Travelers' Ins. Co. (Cal.).....	225
Kendall vs. Travelers' Protective Ass'n (Ore.).....	149
Kenney vs. Bankers' Acc. Ins. Co. (Iowa).....	75
Kinsey vs. Pacific Mut. Life Ins. Co. (Cal.).....	215
Kling vs. Masons' Frat. Acc. Ass'n (La.).....	206
Knickerbocker Cas. Co. vs. Jordan (Ohio).....	161
Koprivica vs. Standard Acc. Ins. Co. (Mo.).....	229

**L**

Lancashire & Yorkshire Acc. Ins. Co. ads. Etherington (Eng.)	85
Landon vs. Pref'd Acc. Ins. Co. (N. Y.).....	44

	Page
Larkin vs. Interstate Cas. Co. (N. Y.).....	46
Lassater ads. Aetna Life Ins. Co. (Ala.).....	193
Lawrence vs. Accidental Ins. Co. (Canada).....	165
Layton vs. Interstate Bus. Men's Acc. Ass'n (Iowa).....	106
Lehman vs. Great Western Acc. Ass'n (Iowa).....	94
Leland vs. Order of United Com'l Trav. of Am. (Mass.).....	249
Lenarick vs. Nat'l Cas. Co. (Minn.).....	127
Lewis ads. Interstate Bus. Men's Ass'n (Fed.).....	155
Lewis vs. Iowa State Trav. Men's Ass'n (Fed.).....	153-154
Lewis vs. Ocean Acc. & Guar. Corp'n, Ltd. (N. Y.).....	154
Lickleider vs. Iowa State Trav. Men's Ass'n (Iowa)....	151-153
Lloyd ads. Continental Ins. Co. (Ind.).....	15
London, B. & S. C. R'way Co. ads. Pugh (Eng.).....	40
London Guar. & Acc. Co. Ltd. ads. Mather et al. (Minn.)....	32
London Guar. & Acc. Co. Ltd. ads. Root (N. Y.).....	57
Loyal Protective Ins. Co. ads. Freeman (Mo.).....	214
Loyal Protective Ass'n ads. Thompson (Mich.).....	209
Ludwig vs. Pref'd Acc. Ins. Co. (Minn.).....	92

**M**

Mackie ads. Western Indem. Co. et al. (Texas).....	131
Malone ads. Trav. Protective Ass'n of Am. (Miss.).....	242
Malone ads. U. S. Cas. Co. of N. Y. (Miss.).....	242
Maloney vs. Maryland Cas. Co. (Ark.).....	199
Manufacturers' Acc. Indem. Co. vs. Dorgan (Fed.).....	36
Manufacturers' Acc. Indem. Co. ads. Martin (N. Y.).....	34
Mardorf vs. Acc. Ins. Co. (Eng.).....	54
Maritime Passengers' Acc. Co. ads. Sinclair.....	25
Martin vs. Equitable Acc. Ass'n (N. Y.).....	34
Martin vs. Illinois Com'l Men's Ass'n (Ill.).....	126
Martin vs. Interstate Bus. Men's Acc. Ass'n (Iowa).....	227
Martin vs. Manufacturers' Acc. Indem. Co. (N. Y.).....	34
Maryland Cas. Co. vs. Glass (Texas).....	52
Maryland Cas. Co. ads. Herdic (Fed.).....	71
Maryland Cas. Co. ads. H. P. Hood & Sons Co. (Mass.).....	88
Maryland Cas. Co. vs. Hudgins (Texas).....	164
Maryland Cas. Co. ads. Maloney (Ark.).....	199
Maryland Cas. Co. vs. McCallum (Ala.).....	214

	Page
Maryland Cas. Co. vs. Morrow (Fed.) . . . . .	116
Maryland Cas. Co. vs. Ohle (Md.) . . . . .	194
Maryland Cas. Co. vs. Spitz (Fed.) . . . . .	149
Masonic Protective Ass'n ads. Mullins (Mo.) . . . . .	188
Masonic Protective Ass'n ads. Robinson (Vt.) . . . . .	192
Masons Frat. Acc. Ass'n ads. Kling (La.) . . . . .	206
Masachusetts Bond. & Ins. Co. vs. Duncan (Ky.) . . . . .	123
Massachusetts Mut. Acc. Ins. Ass'n ads. Farner (Pa.) . . . . .	76
Mather et al. vs. London Guar. & Acc. Co. Ltd. (Minn.) . . . . .	32
Matthis ads. Continental Cas. Co. (Ky.) . . . . .	192
Mays ads. New Amsterdam Cas. Co. (D. C.) . . . . .	173
McAuley vs. Casualty Co. of Am. (Mont.) . . . . .	81-82
McCabe ads. Pacific Mut. Life Ins. Co. (Ky.) . . . . .	113
McCallum ads. Maryland Cas. Co. (Ala.) . . . . .	214
McCarthy vs. Travelers' Ins. Co. (Fed.) . . . . .	159
McCluskey ads. Equitable Mut. Acc. Ass'n (Colo.) . . . . .	8
McCormack et al. vs. Illinois Com'l Men's Ass'n (Fed.) . . . . .	196
McCullough vs. Railway Mail Ass'n (Pa.) . . . . .	198
McEwen vs. Occidental Life Ins. Co. (Cal.) . . . . .	99-100
McGlinchey et al. vs. Fid. & Cas. Co. (Me.) . . . . .	1
McInerney ads. Travelers' Ins. Co. (Ky.) . . . . .	86
Meldrim ads. Pacific Mut. Life Ins. Co. (Ga.) . . . . .	250
Melick ads. Travelers' Ins. Co. (Fed.) . . . . .	158
Mercantile Mut. Acc. Ass'n ads. Freeman (Mass.) . . . . .	9
Mercier vs. Travelers' Ins. Co. (Wash.) . . . . .	207
Meredith ads. General Acc. & Life Assur. Corp'n, Ltd. (Ky.)	190
Merkel vs. Railway Mail Ass'n (Mo.) . . . . .	237
Merrick vs. Travelers' Ins. Co. (Kansas City, Mo.) . . . . .	137
Metropolitan Cas. Ins. Co. vs. Edwards (Texas) . . . . .	222
Meyer ads. Fid. & Cas. Co. (Ark.) . . . . .	105
Meyer vs. Fid. & Cas. Co. (Iowa) . . . . .	39
Midland Cas. Co. ads. Higgins (Ill.) . . . . .	28
Midland Cas. Co. ads. Hummer (Mich.) . . . . .	178
Miller ads. Columbian Nat'l Life Ins. Co. (Ga.) . . . . .	111
Miller vs. Fid. & Cas. Co. (Fed.) . . . . .	176
Miller ads. North American Acc. Ins. Co. (Texas) . . . . .	142
Miner vs. Travelers' Ins. Co. (Ohio) . . . . .	5
Ministers' Cas. Union ads. Hickey (Minn.) . . . . .	134

	Page
Mitchell ads. Fid. & Cas. Co. (Eng.).....	144
Modern Acc. Club ads. Delaney (Iowa).....	55
Modern Brotherhood of Am. ads. Sullivan (Mich.).....	97
Modern Woodmen Acc. Ass'n vs. Shryock (Neb.).....	187
Moon vs. Order of United Com'l Trav. of Am. (Neb.).....	115
Moore vs. General Acc. Fire & Life Ins. Corp'n (N. C.).....	179
Morrow ads. Maryland Cas. Co. (Fed.).....	116
Morrow vs. Nat'l Masonic Acc. Ass'n (Iowa).....	59
Muir ads. Pref'd Acc. Ins. Co. (Fed.).....	56
Mullins vs. Masonic Protective Ass'n (Mo.).....	188
Murray ads. General Acc. Fire & Life Assur. Corp'n (Va.)....	136
Murray ads. Travelers' Ins. Co. (Colo.).....	24
Mutual Acc. Ass'n ads. Hubbard (Fed.).....	47
Mutual Bene. Health & Acc. Ass'n ads. Anderson (Kansas City).....	240
Mutual Bene. Health & Acc. Ass'n ads. Kaneft (Neb.).....	215

**N**

Nat'l Ass'n of R'way Clerks vs. Scott (Fed.).....	75
Nat'l Cas. Co. ads. Lenarick (Minn.).....	127
Nat'l Cas. Co. ads. Zeitler (Minn.).....	113
Nat'l Employers' Assur. Ass'n ads. Cawley.....	243
Nat'l Life & Acc. Ins. Co. vs. Cox (Ky.).....	141
Nat'l Life & Acc. Ins. Co. ads. Robinson (Ind.).....	242
Nat'l Life & Acc. Ins. Co. vs. Singleton (Ala.).....	120
Nat'l Masonic Acc. Ass'n ads. Binder (Iowa).....	60
Nat'l Masonic Acc. Ass'n ads. Morrow (Iowa).....	59
Nat'l Masonic Acc. Ass'n ads. Prader (Iowa).....	245
Nat'l Masonic Acc. Ass'n vs. Shryock (Fed.).....	169
Nat'l Relief Assur. Ass'n ads. Sweeney (N. Y.).....	188
Nat'l Trav. Bene. Ass'n ads. Budde (Iowa).....	218
Nat'l Trav. Bene. Ass'n ads. Semmons (Iowa).....	143
Nax vs. Travelers' Ins. Co. (Fed.).....	165
Nax ads. Travelers' Ins. Co. (Fed.).....	166
Nelson vs. Inter-Ocean Cas. Co. (Kans.).....	219
New Amsterdam Cas. Co. ads. Clarke (Cal.).....	16-18
New Amsterdam Cas. Co. vs. Johnson (Ohio).....	123-124
New Amsterdam Cas. Co. vs. Mays (D. C.).....	173

	Page
New Amsterdam Cas. Co. ads. Rathman (Mich.).....	179
New Amsterdam Cas. Co. vs. Shields (Fed.).....	6
Niskern vs. United Brotherhood of Carp'rs & Joiners (N. Y.)	157
North American Acc. Ins. Co. vs. Hills' Admr. (Ky.).....	216
North American Acc. Ins. Co. ads. Hills' Admr. (Ky.).....	217
North American Acc. Ins. Co. vs. Miller (Texas).....	142
North American Acc. Ins. Co. ads. Tromblee (N. Y.).....	132
North American Life & Acc. Co. vs. Burroughs (Pa.).....	163
North American Life & Cas. Co. ads. Ivanovich (Minn.)...	228
Noyes vs. Com'l Trav. Eastern Acc. Ass'n (Mass.).....	65

**O**

O'Brion vs. Columbian Nat'l Life Ins. Co. (Me.).....	237
Occidental Life Ins. Co. ads. Bennetts (Cal.).....	221
Occidental Life Ins. Co. ads. McEwen (Cal.).....	99-100
Ocean Acc. & Guar. Corp'n, Ltd. ads. Lewis (N. Y.).....	154
Ocean Acc. & Guar. Corp'n, Ltd. ads. Patterson (D. C.).....	16
O'Connor vs. Columbian Nat'l Life Ins. Co. (St. Louis, Mo.)	239
Ohle ads. Maryland Cas. Co. of Baltimore (Md.).....	194
Omberg vs. U. S. Mut. Acc. Ass'n (Ky.).....	42
Order of United Com'l Trav. of Am. ads. Berry (Iowa).....	122
Order of United Com'l Trav. of Am. ads. Brinsmade (Iowa) ..	201
Order of United Com'l Trav. of Am. vs. Dobbs (Texas).....	156
Order of United Com'l Trav. of Am. ads. Goodes (Mo.).....	108
Order of United Com'l Trav. of Am. ads. Jaques (Kans.)....	222
Order of United Com'l Trav. of Am. ads. Leland (Mass.)....	249
Order of United Com'l Trav. of Am. ads. Moon (Neb.).....	115
Order of United Com'l Trav. of Am. vs. Roth (Texas).....	211
Order of United Com'l Trav. of Am. ads. Sasse (N. Y.)....	11
Order of United Com'l Trav. of Am. vs. Simpson (Texas)....	118
Order of United Com'l Trav. of Am. vs. Smith (Fed.).....	98
Order of United Com'l Trav. of Am. ads. Wright (Mo.)....	118

**P**

Pacific Mut. Life Ins. Co. ads. Carr (Mo.).....	54
Pacific Mut. Life Ins. Co. vs. Despain (Kans.).....	200
Pacific Mut. Life Ins. Co. ads. Despain (Kans.).....	200
Pacific Mut. Life Ins. Co. ads. Horsfall (Wash.).....	184

	Page
Pacific Mut. Life Ins. Co. ads. Keefer (Pa.).....	247
Pacific Mut. Life Ins. Co. ads. Kinsey (Cal.).....	215
Pacific Mut. Life Ins. Co. vs. McCabe (Ky.).....	113
Pacific Mut. Life Ins. Co. vs. Meldrim (Ga.).....	250
Pacific Mut. Life Ins. Co. ads. Stout (Cal.).....	51
Pack vs. Prudential Cas. Co. (Ky.).....	29
Page vs. Com'l Trav. Eastern Acc. Ass'n (Mass.).....	138
Parks ads. Illinois Com'l Men's Ass'n (Fed.).....	209
Patterson vs. Ocean Acc. & Guar. Co. (D. C.).....	16
Patterson ads. Pref'd Acc. Ins. Co. (Fed.).....	189
Peck vs. Equitable Acc. Ass'n of Binghamton (N. Y.).....	21
Peltier ads. Continental Cas. Co. (Va.).....	63
Penn vs. Standard Life & Acc. Ins. Co. (N. C.).....	95
Pennsylvania Cas. Co. ads. Jones (N. C.).....	67
Pervanger vs. Union Cas. & Surety Co. (Miss.).....	184
Phillips vs. Travelers' Ins. Co. (Mo.).....	239
Phoenix Pref'd Acc. Ins. Co. ads. Garvey (N. Y.).....	2
Pittman ads. Continental Cas. Co. (Ga.).....	28
Pittsburgh Cas. Co. ads. Kelley (Pa.).....	142
Pledger vs. Business Men's Acc. Ass'n of Texas (Texas).....	144-145
Potter vs. Aetna Life Ins. Co. (Wash.).....	104
Prader vs. Nat'l Masonic Acc. Ass'n (Iowa).....	245
Preferred Acc. Ins. Co. ads. Cary (Wis.).....	68
Preferred Acc. Ins. Co. ads. Landon (N. Y.).....	44
Preferred Acc. Ins. Co. ads. Ludwig (Minn.).....	92
Preferred Acc. Ins. Co. vs. Muir (Fed.).....	56
Preferred Acc. Ins. Co. vs. Patterson (Fed.).....	189
Preferred Acc. Ins. Co. vs. Robinson (Fla.).....	185
Preferred Mut. Acc. Ass'n vs. Beidelman (Pa.).....	182
Preferred Mut. Acc. Ass'n ads. Cobb (Ga.).....	162
Prudential Cas. Co. ads. Pack (Ky.).....	29
Pugh vs. London, B. & S. C. R'way Co. (Eng.).....	40

**R**

Railway Mail Ass'n ads. Atherton (Mo.).....	232
Railway Mail Ass'n ads. Cummings (Iowa).....	232
Railway Mail Ass'n vs. Dent (Fed.).....	177
Railway Mail Ass'n ads. Dent. (Fed.).....	177

	Page
Railway Mail Ass'n vs. Harrington (Fed.).....	213
Railway Mail Ass'n vs. Johnson (Ark.).....	228
Railway Mail Ass'n ads. Merkel (St. Louis, Mo.).....	237
Railway Mail Ass'n ads. McCullough (Pa.).....	198
Railway Mail Ass'n ads. Young (Mo.).....	201
Railway Off. & Emp. Acc. Ass'n vs. Coady (Ill.).....	44
Railway Off. & Emp. Acc. Ass'n vs. Johnson (Ky.).....	32
Railway Passengers' Assur. Co. ads. Isitt et al. (Eng.).....	203
Railway Passengers' Assur. Co. ads. Southard (Fed.).....	159
Ramsey v. Fid. & Cas. Co. (Tenn.).....	234
Rathjen vs. Woodmen Acc. Ass'n (Neb.).....	110
Rathman vs. New Amsterdam Cas. Co. (Mich.).....	179
Rembe ads. Central Acc. Ins. Co. (Ill.).....	161
Reynolds vs. Equitable Acc. Ass'n (N. Y.).....	181
Rheinheimer vs. Aetna Life Ins. Co. (Ohio).....	78
Rich vs. Hartford Acc. & Indem. Co. (Ill.).....	147
Richardson ads. General Acc. Life & Fire Assur. Corp'n (Ky.)	114
Rohinson vs. Masonic Protective Ass'n (Vt.).....	192
Robinson vs. Nat'l Life & Acc. Ins. Co. (Ind.).....	242
Robinson ads. Pref'd Acc. Ins. Co. (Fla.).....	185
Rock vs. Travelers' Ins. Co. (Cal.).....	181
Rodey vs. Travelers' Ins. Co. (N. Mex.).....	250
Root vs. London Guar. & Acc. Co., Ltd. (N. Y.).....	57
Rorabaugh vs. Great Eastern Cas. Co. (Wash.).....	248
Roth ads. Order of United Com'l Trav. of Am. (Texas).....	211
Ryan ads. Aetna Life Ins. Co. (Fed.).....	221

## S

Sager Co. (Charles H.) ads. Jeffreys (N. Y.).....	248
Sallinger vs. Fid. & Cas. Co. of N. Y. (Ky.).....	148
Sasse vs. Order of United Com'l Trav. of Am. (N. Y.).....	11
Sasse vs. Travelers' Ins. Co. (N. Y.).....	11
Scarr vs. General Acc. Assur. Corp'n, Ltd. (Eng.).....	62
Schiefelbusch ads. Business Men's Acc. Ass'n of Am. (Fed.)..	230
Schmaltz ads. Standard Life & Acc. Ins. Co. (Ark.).....	150
Schmid vs. Indiana Trav. Acc. Ass'n (Ind.).....	84
Schwindermann vs. Great Eastern Cas. Co. (N. D.).....	148
Scott ads. Nat'l Ass'n of R'way Clerks (Fed.).....	75
Scottish Acc. Ins. Co. ads. Anderson et al. (Scotland).....	22

	Page
Scottish Acc. Ins. Co. ads. Clidero (Scotland) . . . . .	250
Selden ads. Travelers' Ins. Co. (Fed.) . . . . .	40
Semancik vs. Continental Cas. Co. (Pa.) . . . . .	27
Semmons vs. Nat'l Trav. Bene. Ass'n (Iowa) . . . . .	143
Semple ads. Continental Cas. Co. (Ky.) . . . . .	83
Shanberg vs. Fid. & Cas. Co. (Fed.) . . . . .	69
Sharpe vs. Com'l Trav. Mut. Acc. Ass'n of Am. (Ind.) . . . . .	38
Shields ads. New Amsterdam Cas. Co. (Fed.) . . . . .	6
Shryock ads. Modern Woodmen Acc. Ass'n (Neb.) . . . . .	187
Shryock ads. Nat'l Masonic Acc. Ass'n (Fed.) . . . . .	169
Simpkins vs. Hawkeye Com'l Men's Ass'n (Iowa) . . . . .	166
Simpson ads. Order of United Com'l Trav. of Am. (Texas) . . . . .	118
Sinclair vs. The Maritime Pas. Acc. Co. . . . .	25
Singleton ads. Nat'l Life & Acc. Ins. Co. (Ala.) . . . . .	120
Skinner vs. Com'l Trav. Mut. Acc. Ass'n of Am. (Mich.) . . . . .	130
Smith vs. Accident Ins. Co. (Canada) . . . . .	167
Smith ads. Order of United Com'l Trav. of Am. (Fed.) . . . . .	98
Smith vs. Travelers' Ins. Co. (Mass.) . . . . .	117
Smith ads. Western Com'l Trav. Ass'n (Fed.) . . . . .	163
Smouse vs. Iowa State Trav. Men's Ass'n (Iowa) . . . . .	53
Southard vs. Railway Pas. Assur. Co. (Fed.) . . . . .	159
Spitz ads. Maryland Cas. Co. (Fed.) . . . . .	149
Stacey's Executors ads. Fid. & Cas. Co. (Fed.) . . . . .	65
Standard Acc. Ins. Co. vs. Broom (Miss.) . . . . .	133
Standard Acc. Ins. Co. ads. Finucane (N. Y.) . . . . .	4
Standard Acc. Ins. Co. ads. Koprivica (Mo.) . . . . .	229
Standard Life & Acc. Ins. Co. ads. Blackstone (Mich.) . . . . .	245
Standard Life & Acc. Ins. Co. ads. Hooper (Mo.) . . . . .	103
Standard Life & Acc. Ins. Co. ads. Penn (N. C.) . . . . .	95
Standard Life & Acc. Ins. Co. vs. Schmaltz (Ark.) . . . . .	150
Standard Life & Acc. Ins. Co. vs. Thomas (Ky.) . . . . .	33
Standard Life & Acc. Ins. Co. ads. White (Minn.) . . . . .	62
Standard Life & Acc. Ins. Co. vs. Wood (Md.) . . . . .	99
Stanton vs. Travelers' Ins. Co. (Conn.) . . . . .	90
State Life Ins. Co. ads. Bell (Ga.) . . . . .	238
State Life Ins. Co. ads. Hornby (Neb.) . . . . .	247
Stokely vs. Fid. & Cas. Co. (Ala.) . . . . .	120
Stone vs. Fid. & Cas. Co. (Tenn.) . . . . .	129

	Page
<b>Stout vs. Pacific Mut. Life Ins. Co. (Cal.)</b> .....	51
<b>Streeter vs. Western Union Mut. Life &amp; Acc. Soc. (Mich.)</b> .....	180
<b>Strehlow vs. Aetna Life Ins. Co. (Ill.)</b> .....	193
<b>Stull vs. U. S. Health &amp; Acc. Ins. Co. (Ky.)</b> .....	150
<b>Sullivan vs. Modern Brotherhood of Am. (Mich.)</b> .....	97
<b>Summers vs. Fid. Mut. Aid Ass'n (Mo.)</b> .....	160
<b>Sweeney vs. Nat'l Relief Assur. Ass'n (N. Y.)</b> .....	188

**T**

<b>Taylor vs. General Acc. Assur. Corp'n, Ltd. (Pa.)</b> .....	58
<b>Tennant vs. Travelers' Ins. Co. (Fed.)</b> .....	4
<b>Thomas vs. Fid. &amp; Cas. Co. (Md.)</b> .....	74
<b>Thomas ads. Standard Life &amp; Acc. Ins. Co. (Ky.)</b> .....	33
<b>Thompson vs. Columbian Nat'l Life Ins. Co. (Me.)</b> .....	121
<b>Thompson ads. Fid. &amp; Cas. Co. of N. Y. (Fed.)</b> .....	177
<b>Thompson vs. Loyal Protective Ass'n (Mich.)</b> .....	209
<b>Thornton vs. Travelers' Ins. Co. (Ga.)</b> .....	13
<b>Thornton ads. Travelers' Ins. Co. (Ga.)</b> .....	13
<b>Thurber vs. Com'l Trav. Mut. Acc. Ass'n of Am. (N. Y.)</b> .....	48-50
<b>Townsend vs. Com'l Trav. Mut. Acc. Ass'n of Am. (N. Y.)</b> .....	226
<b>Traiser vs. Com'l Trav. Eastern Acc. Ass'n (Mass.)</b> .....	192
<b>Transylvania Cas. Ins. Co. vs. Allan's Adm'r (Ky.)</b> .....	220
<b>Travelers' Ins. Co. ads. Abbott (Mich.)</b> .....	230
<b>Travelers' Ins. Co. ads. Ashelby (Minn.)</b> .....	127
<b>Travelers' Ins. Co. ads. Bellows (Mo.)</b> .....	156
<b>Travelers' Ins. Co. ads. Bingham (Ky.)</b> .....	78
<b>Travelers' Ins. Co. ads. Bohaker (Mass.)</b> .....	111
<b>Travelers' Ins. Co. ads. Dabbert (Ohio)</b> .....	168
<b>Travelers' Ins. Co. vs. Davies (Ky.)</b> .....	107
<b>Travelers' Ins. Co. ads. Flint (Texas)</b> .....	204
<b>Travelers' Ins. Co. vs. Harvey (Va.)</b> .....	162
<b>Travelers' Ins. Co. ads. Horton (Cal.)</b> .....	231
<b>Travelers' Ins. Co. ads. Hubbard (Fed.)</b> .....	47
<b>Travelers' Ins. Co. vs. Hunter (Texas)</b> .....	53
<b>Travelers' Ins. Co. ads. Jiroch (Mich.)</b> .....	70
<b>Travelers' Ins. Co. ads. Kellner (Cal.)</b> .....	225
<b>Travelers' Ins. Co. ads. McCarthy (Fed.)</b> .....	159
<b>Travelers' Ins. Co. vs. McInerney (Ky.)</b> .....	86

	Page
Travelers' Ins. Co. vs. Melick (Fed.).....	158
Travelers' Ins. Co. ads. Mercier (Wash.).....	207
Travelers' Ins. Co. ads. Merrick (Kansas City).....	137
Travelers' Ins. Co. ads. Miner (Ohio).....	5
Travelers' Ins. Co. vs. Murray (Colo.).....	24
Travelers' Ins. Co. vs. Nax (Fed.).....	166
Travelers' Ins. Co. ads. Nax (Fed.).....	165
Travelers' Ins. Co. ads. Phillips (Mo.).....	239
Travelers' Ins. Co. ads. Rock (Cal.).....	181
Travelers' Ins. Co. ads. Rodey (N. Mex.).....	250
Travelers' Ins. Co. ads. Sasse (N. Y.).....	11
Travelers' Ins. Co. vs. Selden (Fed.).....	40
Travelers' Ins. Co. ads. Smith (Mass.).....	117
Travelers' Ins. Co. ads. Stanton (Conn.).....	90
Travelers' Ins. Co. ads. Tennant (Fed.).....	4
Travelers' Ins. Co. vs. Thornton (Ga.).....	13
Travelers' Ins. Co. ads. Thornton (Ga.).....	13
Travelers' Protective Ass'n of Am. ads. Beile (Mo.).....	93
Travelers' Protective Ass'n of Am. ads. Coulter (Ill.).....	170
Travelers' Protective Ass'n of Am. ads. Hatfield (Iowa).....	139
Travelers' Protective Ass'n of Am. ads. Kendall (Ore.).....	149
Travelers' Protective Ass'n of Am. vs. Malone (Mass.).....	242
Tromblee vs. North American Acc. Ins. Co. (N. Y.).....	132

**U**

Union Cas. & Surety Co. ads. Pervanger (Miss.).....	184
U'td Bro'hood of Carp'ns & Joiners of Am. ads. Niskern (N. Y.)	157
U. S. Cas. Co. vs. Griffis (Ind.).....	136
U. S. Cas. Co. ads. Hilts (Mo.).....	172
U. S. Cas. Co. vs. Malone (Miss.).....	242
U. S. Fid. & Cas. Co. vs. Blum (Fed.).....	243
U. S. Fid. & Guar. Co. vs. Davis (Ky.).....	224
U. S. Health & Acc. Ins. Co. ads. Driskell (Mo.).....	14
U. S. Health & Acc. Ins. Co. ads. Stull (Ky.).....	150
U. S. Mut. Acc. Ass'n ads. Bacon (N. Y.).....	23-24
U. S. Mut. Acc. Ass'n vs. Barry (Fed.).....	10
U. S. Mut. Acc. Ass'n ads. Bernays (Fed.).....	183
U. S. Mut. Acc. Ass'n ads. Omberg (Ky.).....	42

	Page
<b>V</b>	
Vernon vs. Iowa State Trav. Men's Ass'n (Iowa).....	171
<b>W</b>	
Ward vs. Aetna Life Ins. Co. (Neb.).....	20
Western Com'l Trav. Ass'n vs. Smith (Fed.).....	163
Western Indem. Co. et al. vs. Mackechnie (Texas).....	131
Western Trav. Acc. Ass'n ads. Hall (Neb.).....	207
Western Trav. Ass'n ads. Williams (Neb.).....	212
Western Union Mut. Life & Acc. Soc. ads. Streeter (Mich.)..	180
White vs. Standard Life & Acc. Ins. Co. (Minn.).....	62
Wicker ads. Aetna Life Ins. Co. (Fed.).....	20
Williams vs. Western Trav. Ass'n (Neb.).....	212
Winspear vs. Accident Ins. Co. (Canada).....	168
Wood ads. Standard Acc. & Life Ins. Co. (Md.).....	99
Woodmen Acc. Ass'n ads. Rathjen (Neb.).....	110
Wright vs. Order of United Com'l Trav. of Am. (Mo.).....	118
<b>Y</b>	
Young vs. Accident Ins. Co. (Canada).....	22
Young ads. Accident Ins. Co. (Canada).....	22
Young vs. Railway Mail Ass'n (Mo.).....	201
<b>Z</b>	
Zappala vs. Industrial Ins. Co. (Wash.).....	117
Zeitler vs. Nat'l Cas. Co. (Minn.).....	113



## **TOPICAL INDEX**



# TOPICAL INDEX

(The references are to pages.)

	Page
<b>Abdomen</b>	
bruised by sliding into cement base; appendicitis. Prior attack of appendicitis.....	91
injured by blow in auto accident; appendicitis; surgical operation; traumatic peritonitis.....	134
injured by blow of pitch-fork; peritoneal inflammation, etc. .....	163
injured by fall against dashboard; appendicitis; septic peritonitis; locked bowels; surgical operation. Prior attacks of appendicitis.....	5
injured by fall from train. Malignant growth on liver .....	216
injured by twisting of body by slipping on icy ground; adhesions of bowels. Prior operation cause of adhesions.....	142
injured by wrench or blow; pancreatitis.....	106
injured in mail car; traumatic appendicitis; septic peritonitis .....	212
strained by swinging sledge hammer; hernia.	160
<b>Abdominal</b>	
muscles injured by strain in bowling; appendicitis. ....	93

	Page
<b>Abrasions</b>	
of skin ; blood poisoning.....	192
of skin ; infection ; blood poisoning.....	178
on cheek ; infectious disease therein.....	102
on foot from wearing new shoe ; erysipelas germs therein. Erysipelas germs in small-pox sores.	135
on head by blow ; unconsciousness. Heart dis- ease .....	50
on head by rubbing with infected towel ; infec- tion ; blood poisoning.....	230
on leg by fall ; bacterial infection therein ; blood poisoning. Disease.....	67
on leg by striking against truck ; blood poison- ing ; septicaemia.....	3
on leg ; infection ; blood poisoning.....	79
on leg injured on car ; inflammation ; erysipelas	80
on limb by use of bath brush ; blood poisoning..	171
on toe by rubbing ; infection. Diabetic gangrene	240
on toe by wearing new shoe ; blood poisoning...	163
or scratch on ear ; infection erysipelas.....	237
<b>Abrasions and bruises</b>	
on head by fall in plunge bath. Epileptic attack caused fall .....	4
on hip by fall in street ; death. Disease.....	169
on hip and knees by fall ; death. Fatty degene- ration of heart.....	187
<b>Abrasions</b>	
of skin, accidental ; blood poisoning ; death.....	192
of skin ; infection ; blood poisoning ; accidental death. ....	178
<b>Abscess</b>	
in lungs by inhalation of bug ; pneumonia. No proof. ....	213

	Page
<b>Abscess</b> —Continued.	
in lungs by rupture of blood vessel while exercising with Indian clubs; inflammation; death	158
in oesophagus and choking on food; death.....	173
on hip and fistulous tract from injury to hip on train. Tubercular abscess.....	113
<b>Accident</b>	
kidney disease; death.....	243
and not uraemic convulsions caused death.....	192
and not venereal disease caused death.....	227
caused hernia .....	215
caused hernia .....	226
caused hernia; surgical operation; death.....	245
caused paralysis .....	179
caused tubercular trouble to flare up again.	
Tubercular lesions healed before.....	143
caused strain and internal injuries; death.....	209
in auto caused death. Overdose of morphine or Bright's disease .....	237
Disease .....	167
fever. Disease; typhoid fever.....	168
weakened condition; pneumonia.....	242
<b>Accidental</b>	
drowning after diving into lake. Heart trouble .	194
injury and diabetes. Co-operating causes.....	62
injury cause of bodily disease and infirmity, and death.....	170
injury; orchitis. Orchitis excepted in policy...	188
injury; infection. Pus germs; internal inflammation .....	80
injury; rheumatism .....	80
injury. Typhoid fever developed later.....	63
strain .....	122
wound; infection; blood poisoning.....	246

	Page
<b>Acute dilation of heart</b>	
by chloroform given for surgical operation and hidden disease of heart.....	92
<b>Adhesions</b>	
of bowels by injury to abdomen by twisting of body in slipping on icy ground.....	142
<b>Amputation of arm</b>	
blood poisoning in scratch on hand.....	67
blood poisoning from infection of hand cut with teeth of another.....	64
<b>Amputation of leg</b>	
foot burned in hot air bath; gangrene. Diabetes	69
injured while extinguishing fire. Prior injury and lameness .....	96
puncture of epigastric artery by needle during surgical operation for hernia; blood clot; gangrene .....	234
toe cut while trimming nail; senile gangrene. Disease; no proof of accident.....	205
toe injured; gangrene. Diabetes.....	115
<b>Anaesthetic</b>	
for operation for injuries by bursting stitches in appendicitis operation wound by vomiting and coughing; unconsciousness; death. Disease contributing cause .....	119
(Chloroform) for operation for appendicitis. Blood poisoning; septic poisoning.....	51
(Chloroform) for operation; acute dilation of heart. Hidden disease of heart.....	92
<b>Aneurism</b>	
and ruptured artery. Knocked down by break- ers caused drowning.....	201

	Page
<b>Aneurism</b> —Continued.	
of the aorta by blow on chest; death. Dilation of heart; arterio sclerosis caused by syphilis.	141
of the aorta ruptured in fall down stairs. Faint- ness. . . . .	10
<b>Angina pectoris</b>	
and heart spasms. Fall from bicycle fracturing right femur . . . . .	56
due to hemorrhage into aorta caused by fall. Heart enlarged; arteries and blood vessels diseased. . . . .	138
<b>Ankle</b>	
injured and fibula fractured by fall on icy walk; shock; encephalo; lung congestion; death. Arterio sclerosis . . . . .	73
<b>Anthrax</b>	
malignant pustule, on lip. Poison; infectious disease; carbuncle . . . . .	23
<b>Apoplexy</b>	
and paralysis from fall, and arterio sclerosis and Bright's disease, cause of death. . . . .	130
from blood clot on brain—head injured by fall on ice. Degeneration of nerve and brain cells caused by blow in falling from wagon and wheel passing over neck. Apoplexy caused fall. . . . .	210
caused by cerebral hemorrhage due to injuries to head and face in falling from buggy. Heart disease or apoplexy caused fall. . . . .	195
caused by contusion of cerebellum from fall. Degeneration of cerebrum, etc. . . . .	37
caused by rupture of blood vessel in brain by shock and excitement watching fire. . . . .	116

	Page
<b>Apoplexy—Continued.</b>	
caused fall. Uraemic poisoning. Accidental fall causing injury to face and death.....	247
caused fall. Apoplexy caused by blow in fall from wagon and wheel passing over neck....	51
caused fall. Fall from car; blood vessel ruptured.....	103
caused by fall on floor causing hemorrhage from ear and nose and fracture at base of skull....	108
caused by exertion running up hill; pain in head. Bodily infirmity and predisposition to apoplexy.....	40
or heart failure. Drowning.....	215
or paralysis caused by artery ruptured by blow. Arteries diseased and weakened.....	59
or paralysis caused by falling on icy steps. Disease.....	143
or sudden seizure. Accidental fall into water; drowning .....	174
prior to asphyxiation. Asphyxiation .....	111
(See Arterio sclerosis; Cerebral hemorrhage; Hardening of arteries; Paralysis.)	

### **Appendicitis**

and anaesthetic for operation to remedy the bursting of stitches of appendicitis operation wound caused by vomiting, etc., were cause of death .....	119
and operation several days after injury by swinging against car, cause of death. Not immediate disability .....	187
caused by bicycle riding; septic peritonitis.....	7
caused by injury to side by falling; surgical operation; peritonitis; death.....	124
caused by strain in carrying heavy basket. Susceptibility to disease from prior attack.....	89

	Page
<b>Appendicitis—Continued.</b>	
caused by strain of abdominal muscles when bowling. ....	93
and concussion of brain and heart disease, from being struck across stomach by auto and thrown to pavement injuring head.....	16
after injury to abdomen in sliding into a cement base. Prior attack.....	91
Operation; hernia and operation for it; fall; hernia; peritonitis. Hernia sac existed before fall. ....	224
or peritonitis caused by injury to right side in fall on sidewalk.....	20
septic peritonitis; locked bowels caused by in- jury to abdomen in falling against dashboard; surgical operation therefor. Prior attacks of appendicitis. ....	5
Surgical operation for, and chloroform given.	
Blood poisoning and septic poisoning.....	51
Surgical operation for, and septic septicaemia. Not an accident.....	71
Traumatic, by injury to abdomen; septic peri- tonitis. ....	212
traumatic peritonitis or inflammation of peri- neum; surgical operation, result of abdominal injuries from auto overturning. Disease....	134

**Appendix**

inflamed by bicycle riding; septic peritonitis...	7
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**Arm amputated**

Hand cut on teeth of another; infection; blood poisoning; death .....	64
Hand scratched; blood poisoning.....	67

	Page
<b>Arm broken</b>	
face cut and bruised by fall on stone steps; hemorrhages. ....	57
pain in chest and lungs; embolus or thrombus; death. Pneumonia .....	21
<b>Arm, face and head</b>	
injured by falling on floor. Paralysis.....	113
<b>Arm</b>	
punctured with hypodermic needle; infection; blood poisoning .....	226
<b>Arterio sclerosis</b>	
Bright's disease and fall; apoplexy and paralysis 130 and lifting ruptured blood vessel..... 157	
Blood clot near heart from strain in slipping in taking tire off auto; death..... 151	
from syphilis; dilation of heart. Blow on chest caused aneurism of aorta; death..... 141	
cerebral hemorrhage. Inference of accidental fall from bruise..... 239	
cerebral hemorrhage. Hit by subway door; cerebral hemorrhage ..... 221	
hardening of arteries. Strain or over-exertion in controlling horse; blood vessel in brain rup- tured..... 82	
hardening of arteries. Fall; struck body on stone; heart ruptured; death..... 114	
Leg broken; chloroform administered; death... 98	
Fall on icy walk, injured ankle and fractured fibula; shock; encephalo; lung congestion; death..... 73	
<b>Arteries</b>	
diseased and weakened. Blow ruptured artery; apoplexy and paralysis..... 59	

	Page
<b>Artery ruptured</b>	
by fall or blow; apoplexy or paralysis. Arteries diseased and weakened.....	59
in reaching to close shutter; hemorrhage. No accident and consumption.....	42
in extracting teeth; infection from germs on cotton used; blood poisoning. Poison excepted..	204
when insured fell over while sawing board in cramped position. No accident .....	117
<b>Ascending paralysis</b>	
from fall; back injured.....	100
<b>Asphyxiation</b>	
by gas escaping into sleeping room.....	235
by carbon monoxide from imperfect combustion	104
Apoplexy before asphyxiation.....	111
<b>Assaulted</b>	
with sticks; injured; death. Typhoid fever....	214
<b>Auto-intoxication</b>	
from injury to head by fall from buggy. Prior injury and disease.....	88
<b>Automobile accident</b>	
injuries; death. Overdose of morphine or Bright's disease .....	237
<b>Back</b>	
and kidneys injured when thrown against side of car; Bright's disease; death.....	185
injured and strained from fall in car. Typhoid fever.....	47
injured when struck with bale of hay; nephritis; death.....	208

	Page
<b>Back—Continued.</b>	
injured by fall; ascending paralysis; death.....	100
injured; bruises and misalignment of lumbar vertebrae; death. Consumption.....	231
neck and shoulders injured by fall; prevented bending of back and neck. Not lumbago, crick or lame back.....	198
<b>Bacteria</b>	
in injury to gum in extracting teeth; blood poisoning.....	234
<b>Bacterial infection</b>	
in abrasion on leg from fall; blood poisoning....	67
<b>Barrel of beer</b>	
fell on insured; sickness; death. Pneumonia; congestion of lungs; death.....	228
<b>Bathing</b>	
cramps; drowned .....	161
<b>Bath brush used</b>	
caused abrasion on limb; infection; blood poison- ing.....	171
<b>Bed sores</b>	
blood poisoning; disease. Struck with bed-pan; injury; infection; blood poisoning; death.....	199
<b>Bicycle riding</b>	
caused inflammation of appendix; septic peri- tonitis.....	7
<b>Bite</b>	
of venomous insect; death. Poison.....	181

	Page
<b>Bite—Continued.</b>	
of dog; infection; blood poisoning; death. Contact with poison. etc. ....	76
<b>Blindness</b>	
loss of eye, from hemorrhage caused by striking eye on door hinge. Prior disease of eye.....	86
<b>Blood clot</b>	
in epigastric artery caused by puncture by needle while operating on hernia; gangrene in leg; leg amputated.....	234
near heart caused by strain in slipping in taking tire off auto; death. Arterio sclerosis.....	151
on brain caused by fall on ice; apoplexy; death. Degeneration of nerve and brain cells.....	210
on brain and semi-consciousness, from injury to head. Cerebral hemorrhage.....	197
or embolus detached and dislodged by jar in slipping while convalescing from operation...	250
or embolus from exertion of intentional lifting; loss of sight.....	147
<b>Blood poisoning</b>	
in mashed finger; diabetes.....	240
in abrasion on toe from wearing new shoe.....	163
from virulent germs on dental instruments.....	230
in leg injured with hypodermic needle while injecting morphia .....	182
in hand punctured with embalming needle.....	166
from infection of abrasion on head from rubbing head with infected towel.....	230
caused by sting of insect.....	42
caused by swallowing a fishbone which lodged in rectum. ....	167

	Page
<b>Blood poisoning—Continued.</b>	
caused by use of infected cotton after rupture of artery in extracting tooth.....	204
caused by infection of injured finger with virus from injured thumb.....	34
causing loss of sight, from infection during a professional operation .....	194
from accidental abrasion of skin or wound.....	192
from bacteria in injury of gum by extracting teeth.....	234
from bacterial infection in abrasion of leg by fall.....	67
from erysipelas and inflammation in finger cut by steel eraser in scuffing.....	55
from infection by septic matter coughed into eye. No abrasion or wound.....	176
from infection of abrasion on leg; death.....	79
from infection of abrasion of skin, accidental...	178
from infection of accidental wound; infection at time of or after accident.....	246
from infection of finger cut with broken bottle..	146
from infection of foot cut while trimming corn.	165
from infection of scratch on hand; arm amputated.....	67
from infection of scratch or cut on finger.....	78
from infection of thumb bitten by dog.....	76
from infection wound on arm by puncture of hypodermic needle .....	226
from infection of wound result of being struck with bed-pan. Blood poisoning from bed sores	199
from inflammation of pericardial sac and rupture of heart caused by a fall.....	121
from injury to knee; swelling and effusion of water and serum on knee; death. Bright's disease.....	109

	Page
<b>Blood poisoning—Continued.</b>	
in abrasion on limb caused by use of bath brush	171
in cut on hand by teeth of another; arm amputated; death .....	64
or septicaemia from accidental injury to leg.	
Disease contributory cause.....	172
or septicaemia from infection of abrasion on leg caused by striking against truck.....	3
or septicaemia from infection of finger cut on wire spring .....	247
or septicaemia from cutting finger on broken bottle. Contact with a poisonous substance..	161
or septic poisoning. Chloroform for surgical operation for appendicitis.....	51
from accidental injury.....	215
and septicaemia from injury. Clasification in policy as sickness.....	147
(See Infection; Inflammation; Septicaemia.)	

**Blood rupture**

in retina by raising hand suddenly, weakened condition and strong blood pressure, causing loss of sight.....	128
--	-----

**Blood vessel**

in brain ruptured by fall in car. Apoplexy.....	103
in brain ruptured by shock witnessing fire.	
Apoplexy.....	116
in brain ruptured by strain in controlling horse.	
Arterio sclerosis .....	82
in head ruptured; fall; cerebral hemorrhage; paralysis. Cerebral hemorrhage excepted....	156
in lungs ruptured by exercising with Indian clubs; inflammation; abscesses; death. Disease.....	158
in lungs ruptured by strain in lifting mail bags.	200

	Page
<b>Blood vessel—Continued.</b>	
in stomach and lungs by lifting and straining, etc. ....	183
ruptured by lifting, and arterio sclerosis; death	157
ruptured by voluntary exertion.....	52

**Blow**

on abdomen by slipping of pitch-fork; peritoneal inflammation .....	163
on abdomen in auto accident; appendicitis; sur- gical operation; traumatic peritonitis; death..	134
on chest; aneurism of aorta; death. Dilation of heart; and arterio sclerosis from syphilis....	141
on chest; discoloration of chest; spitting of blood; death .....	196
on head; abrasions; unconsciousness; death. Heart disease .....	50
from falling plaster; disability. Fever and hernia not contributory causes.....	12
on stomach; bruises; peritonitis; death.....	235
on temple; hemorrhage; insanity; death.....	77
or fall; artery ruptured; apoplexy; paralysis. Arteries diseased .....	59
or wrench to abdomen; pancreatitis; death.....	106

**Blows**

inflicted by foot-pads; kidneys injured; inflam- mation of kidneys; nephritis.....	155
---	-----

**Bone**

of leg diseased. Leg struck fracturing tibia....	209
--	-----

**Bodily disease**

or infirmity caused by accidental injuries; death.....	170
---	-----

	Page
<b>Bodily infirmity</b>	
predisposition to apoplexy. Exertion running up hill; pain in head; apoplexy.....	40
<b>Boil on neck</b>	
scratched scab off; erysipelas; death.....	149
<b>Bowels</b>	
injured by blow of pitch-fork; peritoneal inflammation.....	163
injured by fall against dashboard; appendicitis; peritonitis. Prior attack of appendicitis....	5
injured by strain in carrying ashes; loop or kink in bowel .....	217
slipped; obstruction of bowels; intussusception; death.....	190
slipped in front of liver after colon fell out of place from strain in pulling on stocking. Not accidental.....	249
<b>Bowling</b>	
strained side; abdominal muscles injured; appendicitis.....	93
<b>Brain</b>	
and head injured by fall on frozen ground; ecchymosis of brain covering; death. Cerebral hemorrhage .....	211
and heart disease cause of fall injuring head....	38
Concussion of, from injury to head by fall. Heart disease, etc. ....	131
Concussion of; neck and head injured by fall on polished floor; death. Dizziness; Bright's disease.....	44
injured in rupturing blood vessel by strain or	

	Page
<b>Brain</b> —Continued.	
exertion in controlling a horse. Arterio sclerosis.....	82
<b>Breast</b>	
injured by fall on heavy iron; pneumonia; death a month later. Not solely accidental.....	149
<b>Bright's disease</b>	
arterio sclerosis; fall from moving car, cause of apoplexy; paralysis; death.....	130
from injuries to back and kidneys when thrown against side of car.....	185
Struck knee; swelling of, and effusion of water and serum; blood poisoning; death.....	109
or overdose of morphine. Injuries from automo- bile accident cause of death.....	237
dizziness. Fall on polished floor; head and neck injured; concussion of brain.....	44
<b>Broken limb</b>	
inflammation and discoloration extending to body; death .....	245
<b>Bruise</b>	
and abrasion on head from fall in plunge bath due to epileptic attack.....	4
carbuncle; infection; diabetes; death.....	219
inference of fall. No inference of accident; arterio sclerosis; cerebral hemorrhage.....	239
on finger by handling heavy material; felon....	191
on hand; embolus passed from it to brain; death	132
left shin. Liver, heart, lungs and appendix dis- eased. ....	74
on side by fall; fever; death. Typhoid fever...	33
on spine by fall in bath room; death. Diseased spine. ....	223

	Page
<b>Bruises</b>	
and cuts on face, and arm broken by fall on stone steps; hemorrhages; death.....	57
and scratches on face and head by fall caused accidentally or by apoplexy; death. Uraemic poisoning.....	247
on back and misalignment of vertebrae by fall; death. Consumption .....	231
on head and neck from hitting fender in fall to floor; concussion of brain; death. Bright's disease.....	44
on stomach from blow; peritonitis; death.....	235
on temple and spinal column by fall; pneu- monia; paralysis; death.....	140
<b>Bug inhaled</b>	
abscess in lung; pneumonia; death. No proof of	213
<b>Burned feet</b>	
in hot air bath; gangrene; toes amputated; leg amputated; death. Diabetes.....	69
<b>Cancer</b>	
hemorrhage therefrom; death. Fall; stomach injured; hemorrhage from peritoncal cavity; death.....	126
ulcer or abscess; death. Slipped; strained groin; ulcer or abscess; death.....	129
<b>Cancerous kidney</b>	
Kidney ruptured by fall.....	15
<b>Cancerous tumor</b>	
of liver ruptured by strain while playing golf; hemorrhage; death .....	233

	Page
<b>Carbon monoxide</b>	
from imperfect combustion; gas poisoning; death. Myocarditis .....	104
<b>Carbuncle</b>	
infectious disease; poison. Anthrax; malignant pustule on lip from putrid animal matter with bacillus. ....	23
from bruise; infection; diabetes; death.....	219
<b>Carrying</b>	
ashes; strained or ruptured side; loop in bowel	217
baggage; strained optic nerve; loss of sight.	
Over-exertion in emaciated condition.....	162
casket; strain from over-exertion; dilation of heart; death. No accident.....	180
<b>Cartilage</b>	
of knee dislocated by stooping. Weakness or disease.....	203
<b>Cataract</b>	
and fall from train; loss of sight.....	294
<b>Cerebral hemorrhage</b>	
from arterio sclerosis. Bruise; fall, etc. ....	239
from arterio sclerosis. Hit by subway door; cerebral hemorrhage; death.....	221
from blood clot on brain. Head injured.....	197
from hardening of arteries. Fall; head injured; cerebral hemorrhage; paralysis.....	222
from injuries to face and head by fall from buggy; apoplexy; death. Heart disease, etc.	195
from rupturing blood vessel due to injury to head by a fall; partial paralysis.....	156

	Page
<b>Cerebral hemorrhage</b> —Continued.	
Fall on frozen ground; injured head; ecchymosis of brain; death.....	211
from shock by falling on sidewalk. Tumor on brain.....	15
or traumatic pneumonia from injury to head and shoulder by a fall, causing death.....	71
<b>Cerebro spinal meningitis</b>	
from wound on head by fall in bath-room.	
Meningitis cause of fall.....	127
<b>Cheek</b>	
abraded; infection; infectious disease; death...	102
<b>Chest</b>	
injured by blow; aneurism of aorta; death.	
Dilation of heart and arterio sclerosis from syphilis.....	141
injured by blow; spitting of blood; death.....	196
in falling and striking post; pulmonary hemorrhages; death .....	112
<b>Chin</b>	
injured by jab of tweezers in removing ingrowing hairs; infection; disability.....	148
<b>Chloroform</b>	
administered to set broken leg. Arterio sclerosis for surgical operation; hidden disease of heart; acute dilation of heart.....	98 92
for surgical operation for appendicitis; blood poisoning. Septic poisoning.....	51
<b>Choked</b>	
on food; abscess in oesophagus; death.....	173

	Page
<b>Cirrhosis</b>	
and cancerous tumor of liver ruptured by strain while playing golf; hemorrhage; death.....	233
of liver. Fall on staircase; injured; death.....	229
<b>Cleaning stables</b>	
contracted glanders, an infectious disease.....	87
<b>Climatic conditions</b>	
climbing steps; physical exertion; death.....	83
<b>Climbing steps</b>	
physical exertion; climatic conditions; death...	83
<b>Cold plunge bath</b>	
shock; dilation of heart; death.....	123
<b>Cold</b>	
pneumonia; death; resulted from accidental fall dislocating shoulder .....	202
<b>Colon</b>	
fell out of place and bowels slipped from strain pulling on stockings. Not accidental.....	249
<b>Concussion of brain</b>	
appendicitis, and heart disease from injury to head and stomach by being struck by auto... from injury to head by falling on floor; death.	16
Bright's disease .....	44
from injury to head by falling out of hack; death. Diseased heart, etc. ....	131
<b>Congestion of lungs</b>	
pneumonia; death. Barrel fell on insured; sickness; death .....	228

	Page
<b>Consumption</b>	
no accident. Artery ruptured in reaching to close a shutter; hemorrhage; death.....	42
Fall injuring back and spine cause of death...	231
<b>Contact with poison ivy</b>	
infection; death. Poison; disease.....	177
inflammation of eyes. Poison or infection.....	185
<b>Contusion of cerebellum</b>	
apoplexy and death due to fall. Degeneration of cerebrum, etc. ....	37
<b>Convalescing</b>	
from operation, slipped and jar detached and dislodged embolus causing death.....	250
<b>Co-operating causes</b>	
accidental injury and diabetes.....	62
<b>Coronary sclerosis</b>	
Fall. ....	137
<b>Coughing</b>	
and vomiting burst stitches in wound of appendi- citis operation; anaesthetic given for opera- tion; death. Disease.....	119
of saliva infected with pyorrhea germs into face; septic poisoning; death.....	137
of septic matter into eye; infection; blood poi- soning. No abrasion.....	176
<b>Cramped</b>	
position sawing board; fell over; ruptured artery; death .....	117

	Page
<b>Cramps</b>	
while bathing. Drowning cause of death.....	161
<b>Cranking auto</b>	
lost footing and fell; injured stomach; death.	
Disease; cysts on kidney.....	189
<b>Cut hand</b>	
on teeth in striking another; blood poisoning;	
arm amputated; death.....	64
<b>Cut finger</b>	
erysipelas; death. No visible marks, etc.....	183
infection; blood poisoning; death. Bodily in-	
firmity, etc. ....	78
on broken bottle; blood poisoning; death.....	146
on broken bottle; blood poisoning or septi-	
caemia; death. Blood poisoning; contact with	
poisonous substance .....	161
on wire spring; infection; blood poisoning or	
septicaemia; death .....	247
with steel eraser; erysipelas; blood poisoning;	
death.....	55
<b>Cut foot</b>	
on earthenware pan; erysipelas; death. Inter-	
vening or secondary cause excepted.....	167
while trimming corn; blood poisoning; death...	165
<b>Cut lip</b>	
while shaving; infection which spread to face	
and neck; death.....	120
<b>Cut throat</b>	
while suffering pain from tetanus from injured	
foot. Suicide, etc. ....	157

	Page
<b>Cut toe</b>	
in trimming nail; gangrene; amputation of leg; death. No proof of accidental injury; disease, senile gangrene .....	205
<b>Cysts</b>	
on kidney, disease. Fell while cranking auto; injured kidney and stomach; death.....	189
<b>Decomposed</b>	
ice cream eaten; ptomaine poisoning; death....	238
<b>Deficient circulation</b>	
from heart weakened by shock of fall.....	48
<b>Degeneration</b>	
of cerebrum. Fall; contusion of cerebellum; apoplexy.....	37
of nerve and brain cells. Fell on ice while skat- ing; injured wrist and head; cerebral apo- plexy; death .....	210
<b>Delirium</b>	
fall from window; death. Disease.....	54
tremens from intoxicatin; morphine adminis- tered; death .....	203
<b>Delirious</b>	
fell from window; death. Disease.....	54
from typhoid fever; fell or jumped from win- dow; death .....	110
<b>Dental treatment</b>	
virulent germs on instruments used; blood poi- soning; death .....	230
<b>Detached and dislodged embolus</b>	
by jar in slipping.....	250

	Page
<b>Diabetes</b>	
and accidental injury co-operating; death.....	62
and blood poisoning from mashed finger. Disease.....	240
concurring. Toe injured; gangrene in foot and leg; leg amputated; death.....	115
and gangrene from burning feet in hot air bath; toes amputated; leg amputated. Diabetes; disease.....	69
and infection of carbuncle caused by bruise; death.....	219
(traumatic) from accidental injury; death.....	193
<b>Diabetic gangrene</b>	
from infection of abrasion on toe by rubbing with towel; death. No proof of accident.....	240
<b>Dilation of heart</b>	
and arterio sclerosis, from syphilis. Blow on chest; aneurism of aorta; death.....	141
from chloroform given for surgical operation....	92
from exertion in lifting.....	184
from shock in taking cold plunge bath; death....	123
from over-exertion or strain by carrying casket downstairs; death. No accident.....	180
by strain from physical exertion; death. Heart weak, etc. ....	61
<b>Disease</b>	
Fall; injuries and disease; death.....	249
and fall on slippery sidewalk ruptured heart....	46
and low vitality passive allies. Accidental falling of scalding water in ear; death.....	13
Accident. ....	168
secondary cause. Broken limb, proximate cause of death .....	245
defense under Revised Statutes of Ohio.....	175

	Page
<b>Diseased condition</b>	
Accidental strain; death.....	16
of mouth; teeth extracted; infection; blood poi-	
soning from infected cotton used. Poison	
excepted.....	204
<b>Diseased</b>	
liver, heart, lungs and appendix. Bruise on left	
shin.....	74
<b>Diving</b>	
into lake; face bruised; death by drowning.	
Heart trouble .....	194
and by slight turn of body ruptured ear drum,	
accidentally.....	250
<b>Dizziness</b>	
or Bright's disease. Fell striking fender; in-	
jured neck and head; concussion of brain;	
death.....	44
<b>Dizzy</b>	
or fainting spells caused fall from window; fall.	243
<b>Dog bite</b>	
infection; blood poisoning.....	76
<b>Drowning</b>	
Epilepsy.....	44
by accidentally falling into cistern while suffer-	
ing from insane delusion. Insanity.....	187
by falling into water. Apoplexy; sudden	
seizure.....	174
by being knocked down by breakers while swim-	
ming; aneurism in the aorta and rupture of	
artery.....	201

	Page
<b>Drowning—Continued.</b>	
by diving into lake head first and bruising face.	
Heart trouble .....	194
by falling or jumping from steamer while suffering from nephritis.....	179
by falling into stream, caused by dizziness or faintness, temporary illness, etc. ....	35
by falling into stream when seized with epileptic fit .....	167
caused death, when seized with cramps while bathing. ....	161
cause of death. Heart failure; apoplexy.....	215
 <b>Duodenitis</b>	
stricture of duodenum, from injury to internal organs by jumping from platform.....	9
 <b>Duodenum</b>	
or pancreas ruptured by fall.....	105
 <b>Ear</b>	
drum ruptured, by slight turn of body when diving.....	250
scratched; infection; erysipelas.....	237
injured by scalding water falling into it. Disease, etc. ....	14
 <b>Eating</b>	
decomposed ice cream; ptomaine poisoning.....	238
mushrooms; ptomaine poisoning. Disease; poisonous substance .....	136
oranges; gastritis; death. Not accidental means	227
unsound food; ptomaine poisoning; death. Tuberculosis.....	191
unsound oysters; ptomaine poisoning; death. Poison, etc. ....	164

	Page
<b>Eechymosis</b>	
of brain covering from injury to head and brain by fall on frozen ground; death. Cerebral hemorrhage. . . . .	211
<b>Embalming</b>	
needle puncture in hand; blood poisoning; death. Contact with poisonous substances, etc. . . . .	166
<b>Embolus</b>	
from bruised hand passed to base of brain; death. . . . .	132
or blood clot detached and dislodged by jar of slipping when convalescing from operation... .	250
or blood clot from exertion in lifting; loss of sight. . . . .	147
<b>Embolism</b>	
or thrombus from broken arm; pain in chest and lungs. Pneumonia . . . . .	21
<b>Endocarditis</b>	
heart disease. Side, colon and intestines in- jured; septicaemia; gangrene; death..... .	58
<b>Enterocolitis</b>	
from ptomaine poisoning. No visible marks, etc.	97
<b>Epigastric</b>	
artery punctured during surgical operation for hernia; blood clot in leg; gangrene; amputa- tion of leg. . . . .	234
<b>Epileptic</b>	
attack; fall in plunge bath; head injured; death . . . . . fit; fall into stream; drowning cause of death..	4 167

	Page
<b>Epilepsy</b>	
Drowning accidental .....	44
<b>Erysipelas</b>	
after cut or laceration of finger; death.....	183
after scratching scab off boil on neck; death.	
Not accidental .....	149
after infection of scratch or abrasion of ear...	237
after inflammation of finger cut with steel eraser, causing blood poisoning. Disease, etc.	55
after inflammation of abrasion on leg injured on car .....	80
germs through abrasion on foot by wearing new shoes. Erysipelas germs through smallpox sores.....	135
in foot through cut by earthenware pan.....	167
in injury to leg by fall on veranda.....	22
in injury to leg; inflammation; septicaemia; septic pneumonia. Intervening causes.....	53
<b>Excitement</b>	
or fright; nervous shock; disability.....	39
and shock from witnessing fire; rupture of blood vessel in brain; apoplexy; death. Disease....	116
<b>Exercising</b>	
with Indian clubs; ruptured blood vessel in lungs; inflammation and abscess in lungs; death.....	158
<b>Exertion</b>	
carrying baggage when in emaciated condition; paralysis of optic nerve or retina; loss of sight.....	162
carrying casket; strain; dilation of heart; death	180

	Page
<b>Exertion—Continued.</b>	
climbing steps in rarified atmosphere. Climate conditions; not accidental.....	83
intentional lifting; embolus or blood clot; loss of sight.....	147
lifting; dilation of heart; death.....	184
or strain in controlling horse; ruptured blood vessel of brain; death. Hardening of arteries or arterio sclerosis.....	82
restraining run-away horse; fright or strain; death.....	1
running up hill; pains in head; apoplexy; death	40
<b>Exposure</b>	
to heat of engine and sun; sunstroke; death....	27
to heat of furnace; heat stroke, sunstroke; death	31
to humid atmosphere and sun; sunstroke; death	25
<b>Eye</b>	
infected by septic matter coughed into it; blood poisoning. No abrasion, etc. ....	176
injured by striking on door hinge; hemorrhage; blindness.....	86
inflamed with gonorrhea by splash of water	
infected with gonorrhreal germs; loss of sight	96
Loss of, due to negligent treatment after injury	178
Paralysis of optic nerve or retina by exertion in carrying baggage when in emaciated condition; loss of sight.....	162
struck with piece of steel; inflammation spreading to other eye causing loss of sight of both eyes.....	87
injured by fall from train and cataract; loss of sight.....	94
infected with septic matter coughed into it; blood poisoning .....	176

	Page
<b>Eyes</b>	
inflamed from contact with poison ivy.....	185
infected during professional operation; blood poisoning; loss of sight.....	194
injured; loss of sight. Prior injury cause.....	199
Loss of sight of, by rupture of blood vessel in retina from raising hand suddenly while in weakened condition, and strong blood pres- sure.....	128
<b>Face</b>	
and head scratched and bruised by fall on loose stones; death. Uraemic poisoning; apoplexy, etc.....	247
arm and head injured by fall upon floor; partial paralysis.....	113
bruised, hemorrhage of nose, neck broken by fall on wet bath-room floor; death. Heart, lungs and brain diseased by intoxicants.....	118
cut and bruised, and arm broken by fall on stone steps; hemorrhages; death.....	57
<b>Fainting</b>	
and dizziness from indigestion or defective heart.	
Fall into stream; drowning cause of death....	35
or dizzy spells caused fall from window; death.	243
<b>Faintness</b>	
caused fall down flight of stairs; rupture of aneurism on aorta; death.....	10
<b>Fall</b>	
on loose stones; face and head scratched and bruised; death. Uraemic poisoning; apoplexy caused fall; death.....	247

**Fall—Continued.**

	Page
against dashboard; abdomen injured; appendicitis; septic peritonitis; surgical operation; death. Prior attacks of disease.....	5
and tendency to disease; death. Disease.....	249
while playing rough; back injured; ascending paralysis; death .....	100
bruising side; fever; death. Typhoid fever....	33
by slipping on banana peel; injured side and internal organs; death. Lead poisoning; lead colic; death .....	218
by slipping on platform at freight house; injured leg; septic and pyemic symptoms; infection. ....	1
caused by fit of vertigo.....	207
by slipping; injured back and neck, preventing bending them. Lumbago, crick or lame back	198
by slipping while cranking auto; injured stomach and kidneys; death. Cysts on kidneys; kidneys diseased .....	189
by stumbling; side injured on rail; hemorrhages; death. Lungs weak; disease.....	43
from sudden faintness, temporary disorder. Fits or vertigo .....	46
causing insanity six months later; suicide.....	180
and death due to coronary sclerosis.....	137
cause of hernia.....	122
cause of hernia.....	143
cause of hernia.....	222
abrasions and bruises on hip and knees; death. Fatty degeneration of heart.....	187
abrasions on leg; bacterial infection; blood poisoning; death .....	67
bruises on back and misalignment of vertebrae; death. Consumption .....	231

	Page
<b>Fall—Continued.</b>	
contusion of cerebellum; apoplexy. Degeneration of cerebrum .....	37
dislocating shoulder; condition weakened; caught cold; pneumonia; death.....	202
downstairs; head injured; paralysis; death. Hardening of arteries; cerebro hemorrhage; death.....	222
down stairs; ruptured large aneurism on aorta.	
Faintness cause of fall.....	10
caused by fits or vertigo, temporary disorder, etc. Disease .....	39
apoplexy and paralysis; death. Arterio sclerosis and Bright's disease co-operating, cause of death.....	130
from bicycle; fractured femur; heart spasms and angina pectoris.....	56
from buggy; injured head; auto-intoxication; death. Prior injury caused auto-intoxication, etc.....	88
from buggy; injured face and head; cerebral hemorrhage; apoplexy; death. Heart disease or apoplexy caused fall.....	195
from cart; kidney disease accelerated thereby; death.....	21
from cramped position when sawing wood; artery ruptured; death.....	117
from over-exertion; heart ruptured; death. Fatty degeneration of heart.....	68
from train, and cataract, caused loss of sight...	94
from train caused by temporary sickness; death. Disease.....	55
from veranda; leg injured; erysipelas; death...	22
from wagon; inflammation of liver; death.....	107
from wagon, wheel passed over neck; blow	

	Page
<b>Fall—Continued.</b>	
caused apoplexy; death. Apoplexy caused fall.....	51
from window caused by delirium.....	54
from window caused by fainting or dizzy spells; fall caused death.....	243
from window. Somnambulism.....	161
from window while delirious from typhoid fever; unconsciousness; death.....	110
injuring head and shoulder; unconscious; traumatic pneumonia; cerebral hemorrhage; death. Disease .....	71
injured head; blood clot on brain; death. Cerebral hemorrhage .....	197
injured head; concussion of brain; death. Heart disease, etc. ....	131
injured abdomen; hernia; death. Operations previously for appendicitis and hernia, and hernia sac existing.....	224
in bathroom; bruised spine; death. Spine diseased.....	223
in bathroom; wounded head; cerebro spinal meningitis; death .....	127
in ear; back hurt and strain; hemorrhage; death. Typhoid fever.....	47
induced peritonitis of liver; death. Prior attacks of disease.....	8
injured head; death. Fatty degeneration of brain and heart.....	38
injured hip and side; inflammation of pericardial sac and rupture of heart; blood poisoning; death .....	121
injured hip, stomach and side; peritoneum infected; peritonitis; death .....	112
injured side; operation for appendicitis; peritonitis; death. Peritonitis caused by disease.	124

	Page
<b>Fall—Continued.</b>	
injured spinal column and temple; blood clot; pneumonia; paralysis; death.....	140
injuring stomach; hemorrhage from peritoneal cavity; death. Hemorrhage from cancer.....	126
in plunge bath; abrasion and bruises on head; death. Epileptic attack caused fall; injuries from fall insufficient to cause death.....	4
in street; abrasions and bruises on hip and knee; aggravated pre-existing disease; death.....	169
in street car; injured arm; ruptured blood vessel in brain; death. Apoplexy.....	103
into cistern while suffering insane delusion; drowning cause of death. Insanity.....	187
into excavation weakened system; pneumonia; death.....	202
into pit; injuries; pneumonia; death. Used intoxicants, etc. ....	243
into stream when seized with epileptic fit; drowning cause of death.....	167
into stream; drowning; death. Dizziness and faintness, temporary illness, etc. ....	35
into water; drowning cause of death. Apo- plexy; sudden seizure.....	174
inferred by bruise. No inference of accident; arterio sclerosis; cerebral hemorrhage.....	239
of barrel of beer on insured; sickness; death. Pneumonia caused congestion of lungs and death.....	228
on floor; hemorrhage from ear and nose, frac- ture at base of skull; death. Apoplexy.....	108
on floor; injured arm, face and head; paralysis. Disease.....	113
on floor while ill; injured head, neck, shoulder and arm; death. Injuries not sufficient to cause death .....	99-100

Fall—Continued.	Page
on frozen ground; injured head and brain; ecchymosis of brain covering; death. Cerebral hemorrhage .....	211
on ice while skating; injured wrist and head; blood clot on brain; apoplexy; death. Degeneration of nerve and brain cells.....	210
on icy sidewalk; injured right side; appendicitis; peritonitis .....	20
on icy steps; apoplexy or paralysis; death.....	143
on icy walk; injured ankle and fractured fibula; shock; encephalo; lung congestion; death. Encephalo meningitis; arterio sclerosis.....	73
on polished floor, hitting head on fender; concussion of brain; death. Dizziness or Bright's disease.....	44
on sidewalk; shock; cerebro hemorrhage. Tumor on brain.....	15
on sidewalk. Conflicting proof as to disease and accident.....	208
on sidewalk; death. Kidney disease.....	119
on slippery pavement and disease caused rupture of heart.....	46
on staircase; injuries; death. Cirrhosis of liver.	229
on railroad tracks when seized with fit and killed by train.....	165
on station platform by foot giving away; injured by train .....	65
on stone steps; arm broken and face cut and bruised; hemorrhages; death.....	57
on wet floor; face bruised, hemorrhage of nose, neck broken; death. Heart, lungs and brain diseased by intoxicants.....	118
on wet ground; shock and wetting lowered vitality; pneumonia .....	84

	Page
<b>Fall—Continued.</b>	
(or jump) overboard while suffering from nephritis; drowning not accidental.....	179
of timber on insured caused hernia.....	228
or blow; artery ruptured; apoplexy or paralysis; death. Weak and diseased arteries.....	59
caused rupture; surgical operation; death.	
Predisposition to rupture.....	133
ruptured kidney. Cancerous kidney.....	15
shock caused weakening of heart and deficient circulation.....	48
striking body on stone; ruptured heart; death.	
Hardening of arteries, arterio sclerosis.....	114
striking breast against heavy iron; pneumonia; death.....	149
striking breast; hemorrhage into aorta; angina pectoris; death. Heart enlarged and arteries diseased, etc. ....	138
striking chest on post; pulmonary hemorrhage; death. ....	112
striking head; ruptured blood vessel; cerebral hemorrhage; partial paralysis. Cerebral hemorrhage excepted .....	156
and struck handle on wagon seat; ruptured the duodenum or pancreas; death.....	105
and struck waterspout; injured face and head; death. Heart diseased.....	41
in boarding train; injured abdomen; death.	
Liver diseased .....	216
while extinguishing fire; injured leg; leg amputated. Prior injury and lameness.....	96
<b>Falling</b>	
of scalding water into ear caused death. Disease and low vitality; passive allies.....	13
<b>Fatty degeneration of heart</b>	
and brain; fall; head injured; death.....	38

	Page
<b>Fall—Continued.</b>	
and malignant growth of spleen from injury to side; death .....	207
not accident .....	126
Over-exertion; fall; heart ruptured.....	68
Fall; injured hip and knees; death.....	187
<b>Feet</b>	
burned in hot air bath; gangrene; toes ampu- tated; leg amputated. Diabetes.....	69
<b>Felon</b>	
on finger from bruise by handling heavy material	191
<b>Fever</b>	
from bruise on side by falling. Typhoid fever..	33
and hernia. Head injured by falling plaster; disability.....	12
<b>Finger</b>	
bruised while handling heavy material; felon...	191
cut on wire spring; infection; septicaemia or blood poisoning; death.....	247
cut or lacerated accidentally; death.....	183
cut or scratched; infection; blood poisoning; death.....	78
cut with broken bottle; infection; septicaemia or blood poisoning; death.....	161
cut with broken bottle; infection; blood poison- ing; death .....	146
cut with steel eraser; inflammation; erysipelas; blood poisoning; death.....	55
injured and infected with virus from injured thumb; blood poisoning; death.....	34
mashed; blood poisoning; diabetes; death.....	240

	Page
<b>Fingers</b>	
poisoned by dipping in solution, etc. . . . .	248
<b>Fishbone</b>	
swallowed, lodged in rectum; blood poisoning; death. . . . .	167
<b>Fistulous</b>	
tract and abscess on hip from injury to hip on train. Not tubercular origin. . . . .	113
<b>Fit</b>	
fall into stream; drowning; death. . . . .	167
fall on railroad; killed by train, accidental. . . .	165
of vertigo caused fall. . . . .	207
or vertigo. Sudden faintness; fall; temporary disorder. . . . .	46
or vertigo, temporary disorder; fall. Disease, etc. . . . .	38
<b>Foot</b>	
cut on earthenware pan; erysipelas; death. . . .	167
cut while trimming corn; blood poisoning; death	165
gave away suddenly; fell on station platform; injured by train. Disease. . . . .	65
injured by shooting; tetanus or lockjaw; suffer- ing from pain of injury cut throat. Suicide..	159
injured by wearing new shoe; erysipelas through abrasion. Erysipelas germs through smallpox sores. . . . .	135
injured at work in railroad yards, recovered, ill on day resumed work and died next day. Sickness and injury. . . . .	18
<b>Fractured</b>	
skull by falling on floor; hemorrhages; death.	
Apoplexy. . . . .	108

	Page
<b>Fractured—Continued.</b>	
skull caused shock and unconsciousness. Skull trepanned prior to accident, etc. ....	146
fibula and injured ankle by fall on icy walk; shock; encephalo; lung congestion; death.	
Arterio sclerosis, etc. ....	73
tibia when leg was struck with hard substance.	
Disease. ....	209
<b>Fright</b>	
and excitement caused nervous shock.....	39
and strain caused by exertion in restraining horse. ....	1
<b>Freezing</b>	
not accidental .....	127
<b>Gangrene</b>	
from feet being burned in hot air bath; toes amputated; leg amputated. Diabetes.....	69
and septicaemia, from injury to side, colon, intestines. ....	58
in injured toe, spread to foot and leg; leg amputated; death. Diabetes concurring.....	115
from blood clot by puncture of epigastric artery with needle during operation for hernia; leg amputated. ....	234
of diabetic type; rubbed toe with towel; abrasion; infection .....	240
(senile) and leg amputated; death, from cutting toe while trimming corn. Disease and no proof of accident.....	205
<b>Gas escaped</b>	
asphyxiation, accidental .....	235
poisoning by carbon monoxide from incomplete	

	Page
<b>Gas escaped—Continued.</b>	
combustion of garbage in incinerator. Myocarditis.....	104
<b>Gash</b>	
on lip, by shaving; infection which spread to face and neck.....	120
<b>Gastritis</b>	
from eating oranges; death. Not accidental....	227
<b>Germs</b>	
drawn in middle ear in using nasal douche;	
spinal meningitis .....	116
in system by use of dental instruments; infection; blood poisoning; death.....	230
of pyorrhea; septic poisoning; death.....	136
of gonorrhea in water splashed into eye; gonorrhea; inflammation of eye; loss of sight.....	96
on cotton used in treatment of artery ruptured; blood poisoning; death. Poison.....	204
<b>Glanders</b>	
an infectious disease, contracted while cleaning stables.....	87
<b>Gonorrhea</b>	
causing loss of sight, from splash of water infected with gonorrhreal germs into eyes.....	96
<b>Groin</b>	
injured by running against door knob; hernia..	4
strained by slipping; rupture; ulcers or abscesses. Cancer .....	129
<b>Gum</b>	
injured in extracting teeth; entry for bacteria; blood poisoning .....	234

**Hand**

- bruised ; embolus from injury to brain ; death.. 132  
cut on teeth of another ; blood poisoning ; arm  
    amputated ; death ..... 64  
infected from contact with poison ivy ; death.  
    Poison ; disease ..... 177  
injured ; also side causing malignant growth of  
    spleen and fatty degeneration of heart..... 207  
injured by pressure ; inflammation of periosteum  
    of metacarpal bones ; operation ; disability.... 65  
punctured with embalming needle ; blood poison-  
    ing ; death. Contact with poison, etc. .... 166  
scratched ; blood poisoning ; arm amputated.... 67

**Handling**

- heavy material ; bruised finger ; felon..... 191  
infected rags ; kidney disease..... 156

**Hanging**

- when insane ; self-destruction. Bodily infirmi-  
ties, etc. ..... 173

**Hardening of arteries**

- Exertion or strain in controlling horse ; rup-  
tured blood vessel in brain..... 82  
Fall ; struck body near heart ; ruptured heart ;  
    death. .... 114  
causing cerebro hemorrhage. Fall down stairs ;  
    head injured ; paralysis ; death..... 222

**Hard substance swallowed**

- intestinal canal perforated ; death. Intestinal  
    tissues weakened by sickness..... 175

Head	Page
and brain injured by fall on frozen ground; ecchymosis of brain covering; death. Cerebral hemorrhage .....	211
and face injured by fall from buggy; cerebral hemorrhage; apoplexy; death. Heart disease and apoplexy cause of fall.....	195
and neck bruised by fall on polished floor; concussion of brain; death. Dizziness; Bright's disease. ....	44
and shoulder injured by fall; unconscious; traumatic pneumonia; cerebral hemorrhage; death. ....	71
face and arm injured by fall on floor; paralysis. Disease.....	113
face and brain injured by fall on water spout; death. Heart disease.....	41
injured by fall in car; semi-consciousness; blood clot on brain; death. Cerebral hemorrhage; no accident.....	197
injured by fall from auto to pavement; also stomach injured; concussion of brain; appendicitis. Heart disease concurring.....	16
injured by blow; two abrasions; death. Heart disease. ....	50
injured by blow on temple; hemorrhage; insanity; death .....	77
injured by fall; concussion of brain; death. Heart disease .....	131
injured by fall down stairs; paralysis; death. Hardening of arteries; cerebro hemorrhage...	222
injured by fall; death. Fatty degeneration of heart and brain.....	38
injured by fall from buggy; auto-intoxication; death. Prior injury, etc. ....	88

	Page
<b>Head—Continued.</b>	
injured by fall in bathroom; abrasions; cerebro-spinal meningitis; death. Meningitis, disease.....	127
injured by falling plaster; disability. Fever and hernia .....	12
injured by fall in plunge bath. Epileptic fits; injury not sufficient to cause death.....	4
injured by fall on ice; blood clot on brain; apoplexy; death. Degeneration of nerve and brain cells .....	210
injured by fall; ruptured blood vessel; cerebral hemorrhage; partial paralysis.....	156
neck, shoulder and arm injured by fall on floor when ill; death.....	99-100
pained after running up hill; apoplexy; death. Predisposition to apoplexy, etc. ....	40
rubbed with towel; abrasions; infection; blood poisoning; death .....	230
<b>Heart</b>	
defective; dizziness, etc. Fall in stream; drowning.....	35
and brain, Fatty degeneration of. Fall; head injured; death .....	38
arteries, etc., diseased. Fall; hemorrhage into aorta; angina pectoris; death.....	138
Dilation of, from chloroform given for surgical operation.....	92
Dilation of, from exertion in lifting.....	184
Dilation of, from shock in taking cold plunge bath; death .....	123
Dilation of, by strain or over-exertion in carrying casket down stairs; death. No accident..	180
Dilation of, and arterio sclerosis from syphilis. Blow on chest; aneurism of aorta; death.....	141

	Page
<b>Heart—Continued.</b>	
Dilation of, by strain from physical exertion; death. Heart weak, etc. ....	61
disease. Dilation of heart by chloroform given for surgical operation.....	92
disease. Blow on head; abrasions; unconsciousness; death .....	50
disease. Fall; head injured; concussion of brain; death .....	131
disease. Fall; struck head on water spout; face and brain injured.....	41
disease. Thrown to pavement by auto; head and stomach injured; concussion of brain and appendicitis; death .....	16
disease or apoplexy cause of fall. Fall from buggy; face and head injured; cerebral hemorrhage; apoplexy; death.....	195
disease or endocarditis. Side, colon and intestines injured; septicaemia; gangrene; death..	58
Fatty degeneration of. Over-exertion; fall; ruptured heart .....	68
Fatty degeneration of. Not accident.....	126
Fatty degeneration of. Fall; injured hip and knees; death .....	187
Fatty degeneration of, and brain; fall; head injured; death .....	38
Fatty degeneration of, and malignant growth of spleen from injury to side; death.....	207
failure or apoplexy. Drowning.....	215
lungs and brain diseased by intoxicants. Fall on wet floor; face bruised, neck broken, hemorrhage from nose; death.....	118
ruptured by fall from over-exertion. Heart diseased.....	68
ruptured by fall on slippery pavement and disease cause of death.....	46

	Page
<b>Heart—Continued.</b>	
ruptured by fall and striking body on stone.	
Hardening of arteries.....	114
ruptured by strain in lifting cotton bales; death	144
ruptured; pericardial sac inflamed; blood poi-	
soning; death, result of fall.....	121
spasms and angina pectoris; fracture of right	
femur by fall from bicycle.....	56
strained by physical exertion; dilation of heart;	
death. Heart weak and unhealthy.....	61
trouble. Diving into stream head first; face	
bruised; drowning cause of death.....	194
weak and unhealthy. Strained heart by physical	
exertion; dilation of heart; death.....	61
<b>Heat</b>	
prostration or sunstroke. Disease.....	24
stroke and sunstroke are synonomous terms...	31
stroke from exposure to heat of furnace; sun-	
stroke.....	31
<b>Hemorrhage</b>	
from blow on temple; raving maniac; insanity;	
death.....	77
due to rupture of artery in reaching to close	
shutter.....	42
due to rupture of cancerous tumor on liver, by	
strain.....	233
and arm broken, face cut and bruised by fall on	
stone steps .....	57
from ear and nose and fracture of skull by fall	
on floor. Apoplexy.....	108
from peritoneal cavity due to injury of stomach	
from fall. Hemorrhage from cancerous	
region; disease .....	126
into aorta; angina pectoris; death, due to fall...	138

	Page
<b>Hemorrhage—Continued.</b>	
of eye from striking eye on hinge; blindness; loss of sight.....	86
<b>Hernia</b>	
accident.....	215
accident.....	226
accidental fall of timber on insured.....	228
accident. Hernia protrusion previously.....	140
accident; operation to relieve; death.....	245
accident; operation; peritonitis; death.....	24
and operations after appendicitis operation; fall; hernia and peritonitis. Hernia sac exist- ing before fall.....	224
caused by fall.....	122
caused by fall.....	148
caused by fall.....	222
caused by injury. No disability.....	193
caused by injury to groin by running against door knob .....	4
caused by lifting.....	117
caused by strain in lifting truck.....	160
caused by strain of abdomen in swinging sledge hammer.....	160
classed as disease in policy.....	171
enlarged suddenly. No proof of injury.....	219
operation; epigastric artery punctured; blood clot; gangrene; leg amputated.....	234
sac existing before fall. Fall; hernia; periton- itis.....	224
with fever not contributing cause. Head in- jured by falling plaster cause of disability...	12
<b>Hidden</b>	
disease of heart; chloroform given for surgical operation; dilation of heart.....	92

	Page
<b>Hip</b>	
and knees injured and bruised by fall; death.	
Fatty degeneration of heart.....	187
and knee bruised, leg injured by fall in street; death. Disease .....	169
injured on train; abscess on hip; fistulous tract. Tubercular abscess.....	113
bruised; stomach and side injured; aperture in colon; infection; peritonitis; death.....	112
<b>Hit</b>	
by subway door; injury; death. Arterio sclero- sis; cerebral hemorrhage.....	221
by train and injured in fall by foot giving way.	65
<b>Hypodermic needle</b>	
puncture of arm; infection; septic poisoning; blood poisoning; death.....	226
used to inject morphia in leg; leg injured; blood poisoning; death .....	182
<b>Ice cream</b>	
(decomposed) eaten; ptomaine poisoning; death	238
<b>Ill</b>	
fell to floor; injured head, neck, shoulder and arm.....	99
health; fall; apoplexy or paralysis; death. Disease.....	143
<b>Infected</b>	
by germs of pyorrhea in saliva coughed into face; septic poisoning; death.....	136
rags handled; infection; kidney disease.....	156

	Page
<b>Infection</b>	
accidental injury. Inflammation; pus germs; pus.....	80
in finger cut on wire spring; septicaemia or blood poisoning; death.....	247
in abrasion on leg caused by fall; inflammation; blood poisoning; death.....	67
in wound on thumb from dog bite; blood poisoning; death .....	76
during professional operation; blood poisoning; loss of sight.....	194
by germs in cotton used on artery ruptured in dental treatment; blood poisoning.....	204
in abrasion of skin; blood poisoning; death.....	178
in cut or scratch on finger; blood poisoning; death.....	78
in abrasion or scratch on ear; erysipelas.....	237
in abrasion on head by rubbing with infected towel; blood poisoning.....	230
in abrasion on leg; blood poisoning.....	79
in abrasion on leg by striking against truck; blood poisoning or septicaemia.....	3
in wound; blood poisoning; death.....	246
of carbuncle caused by bruise; death.....	219
of cut on lip in shaving, spreading to face and neck; death .....	120
of eye by septic matter coughed into it; blood poisoning. No abrasion or wound.....	176
of eye by contact with poison ivy causing inflammation. Contact with poison, etc. ....	185
of hand from poison ivy; death. Poison; disease.....	177
of injury by jabbing tweezers into skin in removing ingrowing hairs from chin.....	148
of lip after pricking pimple with pin; inflammation of brain; death.....	153-155

	Page
<b>Infection—Continued.</b>	
of peritoneum ; peritonitis, result of fall injuring stomach, side and colon.....	112
of wound; blood poisoning; death. Blood poisoning through bed sores.....	199
in injury on leg by falling; septic or pyemic symptoms.....	1
or septic poisoning of hypodermic needle wound in arm; blood poisoning; death.....	226
in mashed finger; blood poisoning; diabetes....	240
in abrasion on toe by wearing new shoe; blood poisoning.....	163
by virulent germs on dental instruments; blood poisoning.....	230
of leg injured with hypodermic needle while injecting morphia; blood poisoning; death....	182
in hand punctured with embalming needle; blood poisoning .....	166
by sting of insect; blood poisoning; death.....	42
of injured finger by virus from injured thumb; blood poisoning; death.....	34
of abrasion in skin; blood poisoning; death....	192
in injury to gum; blood poisoning; death.....	234
of finger cut with steel eraser; inflammation; erysipelas; blood poisoning.....	55
of finger cut with broken bottle; blood poisoning.....	146
of foot cut while trimming corn; blood poisoning.....	165
of scratch on hand; blood poisoning; arm amputated.....	67
of abrasion on limb by bath-brush; blood poisoning. ....	171
in cut on hand by teeth of another; blood poisoning; arm amputated; death.....	64

	Page
<b>Infection—Continued.</b>	
through accidental injury to leg; blood poisoning or septicaemia. Disease contributory..	172
of finger cut on broken bottle; blood poisoning or septicaemia. Contact with poisonous substance. ....	161
by erysipelas germs in abrasion on foot from wearing new shoes. Erysipelas germs in small-pox sores .....	135
of leg injured on car; inflammation; erysipelas; death. ....	80
in abrasion of toe by rubbing; gangrene; death. Diabetic gangrene .....	240
<b>Infectious</b>	
disease, glanders, contracted through abrasion on cheek while cleaning stables; death.....	87
<b>Inference</b>	
of fall from bruise, and that fall was accidental.	
Not proper; no direct proof.....	239
of wrench, strain or shock from lifting; paralysis. Prior stroke of paralysis.....	232
<b>Inflammation</b>	
in abrasion on leg caused by fall; bacterial infection; blood poisoning.....	67
in abrasion on leg injured by car; erysipelas...	80
of appendix by bicycle riding; septic peritonitis	7
of brain after pricking pimple on lip with pin; infection; death .....	154
of eye by splash of infected water; gonorrhea; loss of sight.....	96
of eye injured; inflammation spread to other eye; loss of sight of both eyes.....	87
of eyes from contact with poison ivy. Poison, etc. ....	185

	Page
<b>Inflammation—Continued.</b>	
of intestines due to strain in lifting; death.....	170
of kidneys, from injury to kidneys by blows; death.....	155
of liver by fall from wagon.....	107
of pericardial sac, etc., from injuries from fall.	
Blood poisoning .....	121
of periosteum of metacarpal bones of hand from pressure on hand while sleeping.....	65
<b>Inguinal hernia</b>	
caused by fall of timber on insured.....	228
<b>Ingrowing hairs</b>	
in chin. In removing, skin jabbed with tweez- ers; infection .....	148
<b>Inhalation</b>	
of bug; abscess in lungs; pneumonia. No proof of.....	213
of nasal douche drawing germs in middle ear; spinal meningitis; death. Meningitis.....	116
of gas; asphyxiation, accidental.....	235
of carbon monoxide from incomplete combustion of garbage in incinerator. Myocarditis.....	104
<b>Injured</b>	
by accident; blood poisoning or septicaemia; death.....	147
by operating lawn mower; traumatic neuritis..	75
by fall into pit; pneumonia; death. Intoxicants used.....	243
when assaulted with sticks; death. Typhoid fever.....	214

	Page
<b>Injury</b>	
blood poisoning ; death. Blood poisoning.....	215
by being hit with pole, or strain in avoiding it..	181
hernia. Not disabled.....	193
loss of sight. Injury prior to policy caused loss of sight .....	199
traumatic diabetes; death.....	193
<b>Insane</b>	
impulse; suicide. Infirmitv; permanent in- sanity.....	105
suicide by hanging; self-destruction. Bodily infirmities.....	173
<b>Insanity</b>	
and suicide six weeks after fall. Cause and effect too remote.....	180
and suicide while insane. Bodily infirmity or disease.....	244
from blow on temple; hemorrhage; death.....	77
permanent is infirmity. Sudden insane impulse; suicide.....	105
or insane delusion; fall into cistern; drowning..	181
<b>Insect bite</b>	
venomous poison. Poison.....	181
or sting; blood poisoning; death.....	42
<b>Internal injuries</b>	
and strain by accident cause of death.....	209
by slipping on banana peel and falling; death. Lead poisoning inducing lead colic.....	218
causing stricture of duodenum, duodenitis, from jumping from platform.....	9

	Page
<b>Intestinal</b>	
canal perforated or wounded by hard substance swallowed. Tissues weakened by sickness...	175
<b>Intestines</b>	
inflamed by strain of lifting. Presumption of accident. . . . .	170
injured by strain in pulling pump from pipe hole. No accident. . . . .	220
<b>Intoxicants</b>	
used; heart, lungs and brain diseased. Fall on wet floor; face bruised, neck broken, hemorrhage of nose. . . . .	118
used; unable to withstand disease. Fell into pit; injured; pneumonia; death. . . . .	243
<b>Intoxication</b>	
delirium tremens; morphine for relief; death..	203
<b>Intussusception</b>	
due to jolt causing bowels to slip and become obstructed. . . . .	190
<b>Jabbed</b>	
tweezers into skin while removing ingrowing hairs; infection . . . . .	148
<b>Jar</b>	
from slipping detached and dislodged embolus or blood clot. . . . .	250
<b>Jolt</b>	
in stepping from sidewalk; bowels slipped and became obstructed; intussusception; death... . . . .	190

	Page
<b>Jumped</b>	
from platform; internal organs injured; stricture of duodenum, duodenitis; death.....	9
from car; rupture.....	159
or fell from window while delirious from typhoid fever .....	110
(or fell) overboard while suffering from nephritis; drowning. Not accidental.....	179
<b>Kidney</b>	
and stomach injured by fall; kidney removed; cysts on kidney. Kidney diseased.....	189
disease accelerated by fall from cart.....	21
disease and accident.....	243
diseased from handling infected rags.....	150
ruptured by fall. Cancerous kidney.....	15
<b>Kidneys</b>	
and back injured when thrown against side of car; Bright's disease; death.....	185
diseased. Fall on sidewalk; death.....	119
injured by blows; nephritis or inflammation of kidneys; death .....	155
<b>Knee</b>	
injured by stooping, dislocating cartilage.....	203
injured; swelling; effusion of water and serum; blood poisoning; death. Bright's disease....	109
<b>Knocked</b>	
down by breakers while swimming; death by drowning.....	201
<b>Lead</b>	
colic induced by lead poisoning. Slipped on banana peel, fell; injured side; internal injuries; death .....	218

	Page
<b>Leg amputated</b>	
for gangrene caused by feet being burned in hot air bath. Diabetes.....	69
for gangrene from blood clot due to puncture of epigastric artery with needle during surgical operation for hernia.....	234
for injuries by fall while extinguishing fire....	96
for senile gangrene from cutting toe while trimming nail; death. Disease; no proof of accident.....	205
<b>Leg broken</b>	
in three places; chloroform given to set leg; death. Arterio sclerosis.....	98
<b>Leg bruised</b>	
death. Liver, heart, lungs and appendix diseased; no marks of violence.....	74
<b>Leg fractured</b>	
by fall from bicycle; heart spasms; angina pectoris.....	56
by fall on icy walk; shock, etc.; death. Arterio sclerosis.....	73
<b>Leg injured</b>	
abrasion; infection; blood poisoning.....	79
abrasions and bruises of hip and knee, from fall.....	169
by fall; abrasion; blood poisoning through bacterial infection .....	67
by fall from veranda; erysipelas; death.....	22
by fall on platform; septic or pyemic symptoms	1
by fall while extinguishing fire; amputation of leg. Prior injury and lameness.....	96
by striking against truck; abrasion; infection; blood poisoning or septicaemia.....	3

	Page
<b>Leg injured—Continued.</b>	
by thumb nail; inflammation; erysipelas; septi- caemia; septic pneumonia. Intervening causes	53
septicaemia; blood poisoning; death.....	172
on car; abrasion; inflammation; erysipelas; death.....	80
in using hypodermic needle to inject morphia; blood poisoning .....	182
<b>Leg struck</b>	
with hard substance fracturing fibia. Disease or weakness of bone.....	209
<b>Lesions</b>	
of blood vessels in lungs caused by strain in lifting.....	200
<b>Lifting</b>	
and arterio sclerosis caused rupture of blood vessel.....	157
and exertion cause of dilation of heart.....	184
a truck caused strain and hernia.....	160
caused hernia .....	117
caused strain; inflammation of intestines; death	170
cotton bales caused rupture of heart and death.	144
heavy cylinder, wrenched body; ruptured blood vessel in stomach; death.....	150
heavy substance; injured stomach and lungs and ruptured blood vessels; death.....	183
mail bags; strain and ruptured blood vessels in lungs.....	200
or intentional exertion; blood clot or embolus; loss of sight.....	147
<b>Limb broken</b>	
black and discolored; discoloration extended to body; death. Injury proximate cause; dis- ease secondary .....	245

	Page
<b>Limb injured</b>	
by abrasion by use of bath brush; blood poisoning; death .....	171
<b>Lip</b>	
cut while shaving; gash infected; infection spread to face and neck; death.....	120
infected by putrid animal matter, bacillus anthrax, and causing malignant pustule.....	23
infected on pricking pimple with pin; inflammation of brain; death.....	153-155
<b>Liver</b>	
disease by malignant growth, and abdomen injured by fall from train; death.....	216
heart, lungs, kidneys and appendix diseased.	
Shin bruised .....	74
injured by fall from wagon; inflammation of liver.....	107
Peritonitis of, induced by fall. Prior attacks of disease.....	8
ruptured, by strain and cancerous tumor; hemorrhage; death .....	233
<b>Lockjaw</b>	
or tetanus from injury to foot; pain thereof caused insured to cut his throat. Suicide.....	157
<b>Loss of eye</b>	
from hemorrhage caused by striking eye on door hinge.....	86
result of negligent treatment of injury to eye...	178
<b>Loss of sight</b>	
by blood poisoning from infection during professional operation .....	194
by blood rupture in retina by raising hand sud-	

	Page
<b>Loss of sight—Continued.</b>	
denly while in weakened condition, and strong blood pressure .....	128
by embolus or blood clot, from exertion.....	147
by fall from train and cataract.....	94
by inflammation due to splash of water infected with gonorrhreal germs, into eye.....	96
caused by injury. Prior injury caused loss.....	191
from over-exertion while in emaciated condition causing paralysis of optic nerve or retina....	162
of both eyes, by inflammation of injured eye spreading to both eyes.....	87
<b>Low vitality</b>	
and disease passive allies. Death caused by falling of scalding water into ear.....	13
<b>Lumbago</b>	
crick or lame back. Shoulder and neck hurt by fall. ....	198
<b>Lung</b>	
congestion and death from fall on icy sidewalk and shock, etc. Encephalo meningitis; arterio sclerosis. ....	73
<b>Lungs</b>	
and stomach injured by lifting; strain; blood vessel ruptured .....	183
injured by exercising with Indian clubs; rupture; abscess .....	158
injured by strain in lifting mail bag; lesion of blood vessel .....	200
weak. Side injured in stumbling and falling against rails; hemorrhage; death.....	43



	Page
<b>Neck—Continued.</b>	
and shoulder hurt by fall. Lumbago, crick or lame back .....	198
and face infected by infection of cut on lip while shaving; death .....	120
<b>Needle</b>	
(hypodermic) puncture of arm; infection; blood poisoning .....	226
(hypodermic) puncture of leg; blood poison- ing .....	182
puncture of epigastric artery; blood clot; gan- grene in leg; amputation of leg .....	234
<b>Negligent</b>	
treatment of injured eye caused loss of eye.....	178
<b>Nephritis</b>	
from injury to back when struck with bale of hay .....	208
from injury to kidneys by blows; death.....	155
cause of drowning when insured jumped or fell overboard.....	179
<b>Nervous shock</b>	
caused by fright and excitement.....	39
<b>Neuritis</b>	
(traumatic) after injury from operating lawn mower.....	75
<b>New shoe worn</b>	
abrasion on foot; erysipelas germs in abrasion. Erysipelas germs in smallpox sores.....	135
abrasion on toe; infection; blood poisoning; death.....	163

	Page
<b>Ohio Statutes</b>	
Disease as defense.....	175
<b>Oranges eaten</b>	
gastritis; death. No accident.....	227
<b>Orchitis</b>	
from accidental injury. Company not liable under policy .....	188
<b>Overdose of morphine</b>	
or Bright's disease. Automobile accident cause of death .....	237
<b>Over-exertion</b>	
carrying baggage; paralysis of optic nerve or retina; loss of sight.....	162
carrying casket; strain; dilation of heart; death and fall; ruptured heart. Fatty degeneration of heart.....	180 68
Slipped taking tire off auto; blood clot. Arterio sclerosis.....	151
and strain. Struck with pole; death.....	181
<b>Oysters</b>	
(unsound) eaten; ptomaine poisoning; death...	164
<b>Pancreatitis</b>	
from wrench or blow on abdomen.....	106
<b>Paralysis</b>	
and pneumonia from injury to temple and spine by fall .....	140
(ascending) from fall, injuring back.....	100
caused by apoplexy from fall. Arterio sclerosis and Bright's disease.....	130

	Page
<b>Paralysis—Continued.</b>	
caused by cerebral hemorrhage from rupture of blood vessel by striking head in falling.....	156
caused by fall on floor, injuring arm, head and face.....	113
caused by railroad accident.....	179
No inference of wrench, shock or strain causing it.....	232
of optic nerve or retina causing loss of sight, from over-exertion .....	162
or apoplexy from artery ruptured by fall or blow.....	59
or apoplexy and death caused by fall. Ill health.....	143
result of injury to head by falling down stairs; death.....	222
<b>Periosteum</b>	
of metacarpal bones of hand inflamed by pressure on hand while sleeping.....	65
<b>Peritoneal</b>	
inflammation from blow of pitchfork, causing death.....	163
<b>Peritoneum</b>	
infected after fall injuring stomach; peritonitis; death.....	112
<b>Peritonitis</b>	
appendicitis and locked bowels from injuries by fall against dashboard. Prior attacks of appendicitis.....	5
caused by blow on stomach.....	235
caused by infection of peritoneum injured by fall.....	112
caused by surgical operation for hernia.....	24

	Page
<b>Peritonitis—Continued.</b>	
caused by surgical operation for appendicitis	
from injury to side by falling.....	124
following inflammation of appendix by bicycle	
riding.....	7
of liver induced by fall. Prior attacks of dis-	
ease.....	8
or inflammation of appendix from injury to side	
by falling on icy walk.....	20
(septic) from traumatic appendicitis from in-	
jury to abdomen in mail car.....	212
(traumatic) from operation to remove appendix	
after injury to abdomen by blow in auto acci-	
dent.....	134
<b>Pressure</b>	
on hand while asleep caused inflammation of	
periosteum of bones.....	65
<b>Physical exertion</b>	
climbing steps in rarified atmosphere; death.	
Not accidental .....	83
strained heart; dilation of heart; death. Heart	
weak.....	61
<b>Pimple</b>	
on lip pricked with pin; infection; inflamma-	
tion of brain.....	153-155
<b>Pitchfork</b>	
slipped; abdomen ruptured; peritoneal inflam-	
mation; death .....	163
<b>Pneumonia</b>	
and paralysis caused by injuries to temple and	
spine by fall.....	140

	Page
<b>Pneumonia—Continued.</b>	
Arm broken; pain in chest and lungs; embolism or thrombus .....	21
from lowered vitality caused by shock and wet- ting from falling on wet ground.....	84
from abscess in lung from inhalation of bug. No proof.....	213
from activity of pneumonococcus germs when in weakened condition from accident.....	242
from injuries by fall in pit. Intoxicants used..	243
from fall injuring breast; death.....	149
cause of death. Sunstroke not cause of death..	28
causing congestion of lungs. Barrel fell on in- sured; sickness; death.....	228
from fall weakening system; death.....	202
from cold while in weakened condition from fall dislocating shoulder .....	202
(Septic) from septicaemia and erysipelas in leg injured by thumb nail. Intervening causes...	53
(Traumatic). No evidence of accident.....	7
(Traumatic) or cerebral hemorrhage from in- juries to head and shoulder by fall.....	71
<b>Poison ivy</b>	
Contact with; infection of hand; death. Poison, etc.....	177
Contact with; inflammation of eyes.....	185
<b>Poisoning</b>	
of fingers by dipping, etc. ....	248
<b>Predisposition</b>	
to apoplexy, etc. Exertion running up hill; pains in head; apoplexy.....	40
to rupture. Fall; rupture; surgical operation; death.....	133

	Page
<b>Presumption</b>	
of accident and injury. Lifting; strain; inflammation of intestines; death.....	170
(See Inference.)	
<b>Pricked pimple</b>	
on lip with pin; infection; inflammation of brain; death .....	153-155
<b>Prior attacks</b>	
of appendicitis. Fall sliding into cement base; abdomen bruised; appendicitis.....	91
of appendicitis. Fell against dashboard; abdomen injured; appendicitis.....	5
of appendicitis. Strain carrying heavy basket; appendicitis.....	89
of peritonitis of liver. Fall; peritonitis of liver	8
<b>Prior injury</b>	
and disease. Fall from buggy; head injured; auto-intoxication.....	88
and lameness. Fall; leg injured; leg amputated caused loss of sight.....	96
.....	199
<b>Prior operation</b>	
cause of adhesions. Slipped; twisted body; injured abdomen; adhesions of bowels, etc. ....	142
<b>Prior stroke of paralysis</b>	
Inference of wrench, etc.; paralysis.....	232
<b>Ptomaine poisoning</b>	
from eating decomposed ice cream.....	238
from eating mushrooms.....	136
from eating unsound food.....	191
from eating unsound oysters.....	164
was cause of entero-colitis.....	97

	Page
<b>Pulling</b>	
on stocking; colon fell; bowels slipped in front of liver. No accident.....	249
pump from pipe hole; strained intestines. No accident. ....	220
<b>Pulmonary</b>	
hemorrhage caused by injury to chest by falling	112
<b>Puncture</b>	
of arm with hypodermic needle; infection; blood poisoning .....	226
of hand with embalming needle; infection; blood poisoning.....	166
of leg with hypodermic needle; infection; blood poisoning.....	182
of pimple on lip with pin; infection; inflamma- tion of the brain.....	153-155
<b>Pyorrhea</b>	
germs in saliva coughed into face; septic poison- ing; death .....	136
<b>Railroad accident</b>	
cause of paralysis.....	179
<b>Raising</b>	
hand suddenly while in weakened condition and strong blood pressure; blood rupture of re- tina; loss of sight.....	128
<b>Reached</b>	
to close shutter; ruptured artery; hemorrhage. Consumption. ....	42

	Page
<b>Rectum</b>	
injured by lodgment of fishbone swallowed; blood poisoning .....	167
<b>Removing</b>	
ingrowing hairs from chin; jabbed tweezers into skin; infection .....	148
<b>Rheumatism</b>	
caused by accidental injury.....	53
<b>Rubbed</b>	
head with infected towel; abrasion; infection; blood poisoning .....	230
toe; abrasion; infection; gangrene. Diabetic gangrene.....	240
<b>Run over</b>	
by train after falling in fit.....	165
<b>Running</b>	
against door knob; injured groin; hernia.....	4
against door; struck eye on hinge; hemorrhage; loss of eye.....	86
up hill; pain in head; apoplexy. Bodily in- firmity, etc. ....	40
<b>Ruptured</b>	
artery by fall or blow; apoplexy; paralysis. Disease .....	59
artery in reaching to close shutter; hemorrhage; death. No accident; consumption.....	42
artery by falling after sawing wood in cramped position .....	117
blood vessel by falling from ear. Apoplexy....	103
blood vessel by voluntary exertion when recov- ering from sickness, etc. ....	52

	Page
<b>Ruptured—Continued.</b>	
blood vessel in lungs when exercising; inflammation; abscess in lungs; death.....	158
duodenum or pancreas in falling.....	105
kidney by fall. Kidney cancerous.....	15
large aneurism on aorta in fall down stairs.	
Faintness.....	10

**Rupture**

and ulcers or abscess from strain and injury to	
groin in slipping. Cancer.....	129
by fall; surgical operation; death. Predisposi-	
tion to rupture.....	133
by jumping from car.....	159
of artery of heart. Knocked down by breakers	
while swimming; drowning cause of death...	201
of artery in falling over when sawing board in	
cramped position .....	117
of blood vessels and injury to lungs and stomach	
by strain in lifting.....	183
of blood vessel in head by fall; cerebral hemor-	
rhage; partial paralysis.....	156
of blood vessel by lifting and arterio sclerosis	
cause of death.....	157
of blood vessel by strain lifting mail bags.....	200
of blood vessel in brain and apoplexy due to	
excitement and shock from watching fire....	116
of blood vessel by exercising with Indian clubs;	
abscess in lungs; death.....	158
of blood vessel in lungs by strain in lifting.....	183
of blood vessel in brain by strain or exertion	
controlling horse. Hardening of arteries....	82
of blood vessel in stomach by lifting heavy cyl-	
inder.....	150
of cancerous tumor of liver; hemorrhage; death,	
by strain while playing golf.....	233

	Page
<b>Rupture—Continued.</b>	
of ear drum, by slight turn of body while diving	250
of heart by fall on slippery pavement. Disease	46
of heart in fall caused by over-exertion. Heart diseased. ....	68
of heart by falling and striking body on stone.	
Hardening of arteries.....	114
of heart by strain in lifting cotton bales.....	144
of retina and sight destroyed by raising hand suddenly while in weakened condition, etc. . .	128
or strain of side, loop or kink in bowels, and in- flammation caused by carrying ashes.....	217
<b>Scalding water</b>	
falling into ear cause of death. Disease and low vitality passive allies.....	13
<b>Scratched</b>	
scab off boil on neck ; erysipelas ; death.....	149
<b>Scratch</b>	
on hand ; blood poisoning ; arm amputated.....	67
or abrasion on ear ; infection ; erysipelas.....	237
or cut on finger ; infection ; blood poisoning.....	78
or cut on finger ; infection ; blood poisoning....	247
<b>Scuffling</b>	
and cut finger with steel eraser ; inflammation ; erysipelas ; blood poisoning ; death.....	55
<b>Senile gangrene</b>	
after cutting toe while trimming nail ; amputa- tion of leg ; death. Disease ; no proof of acci- dent. ....	205

	Page
<b>Septic matter</b>	
coughed into eye; infection; blood poisoning.	
No abrasion or wound.....	176
<b>Septic peritonitis</b>	
appendicitis and locked bowels from fall against dashboard. Prior attacks of appen- dicitis.....	5
from inflammation of appendix caused by bicycle riding.....	7
from traumatic appendicitis caused by injury to abdomen in mail car.....	212
<b>Septic pneumonia</b>	
septicaemia; erysipelas; inflammation in leg from injury to leg with thumb nail.....	53
<b>Septic poisoning</b>	
blood poisoning; infection of wound in arm by hypodermic needle, cause of death.....	226
or blood poisoning. Chloroform given for sur- gical operation for appendicitis.....	51
from pyorrhea germs in saliva coughed into face.....	136
<b>Septicaemia</b>	
after surgical operation for appendicitis. No accident.....	71
and gangrene from injury to side, colon and in- testines. Endocarditis .....	58
or blood poisoning, causing death, due to injury to leg .....	172
or blood poisoning, from cutting finger on glass.	161
or blood poisoning, from infection of finger cut on wire spring.....	247
or blood poisoning, from infection of abrasion on leg .....	3

	Page
<b>Septicaemia—Continued.</b>	
from erysipelas causing septic pneumonia, due to inflammation in injury to leg.....	53
intervened causing death after accidental in- juries. ....	147
(See Infection; Blood poisoning; Erysipelas; Septic poisoning.)	
<b>Shock</b>	
and excitement from watching fire; rupture of blood vessel in brain; apoplexy; death.....	116
and wetting from fall on wet ground; lowered vitality; pneumonia .....	84
due to fall caused weakening of heart and de- ficient circulation .....	48
encephalo and lung congestion caused by fall on icy walk injuring ankle and fracturing fibula.	
Arterio sclerosis .....	73
from fall on sidewalk; cerebral hemorrhage; death. Tumor on brain.....	15
from fractured skull caused unconsciousness.	
Skull previously trepanned.....	146
of cold plunge bath; dilation of heart; death....	123
to nerves caused by fright and excitement.....	39
<b>Shot</b>	
self in foot; tetanus or lockjaw; cut throat while suffering pain; self-destruction. Suicide.....	157
<b>Shoulder</b>	
and head injured by fall; unconsciousness; cere- bral hemorrhage; traumatic pneumonia.....	71
and neck injured by slipping and falling. Lum- bago, crick or lame back.....	198
dislocated by fall; condition weakened; caught cold; pneumonia; death.....	202

	Page
<b>Sickness</b>	
and voluntary exertion ruptured blood vessel; death.....	52
and injury to foot; death.....	18
<b>Side</b>	
bruised in falling caused fever. Typhoid fever.....	33
bruised; malignant growth of spleen; fatty de- generation of heart; death.....	207
hip and heart injured by fall; inflammation of pericardial sac; blood poisoning; death.....	121
injured by fall; appendicitis; peritonitis; death.....	124
injured by slipping on banana peel; internal in- juries; death. Lead colic; lead poisoning.....	218
injured by stumbling and falling against rails; hemorrhages; death. Lungs weak.....	43
intestines and colon injured; septicaemia; gan- grene; death. Endocarditis or heart disease..	58
strained by bowling; abdominal muscles in- jured; appendicitis .....	93
<b>Shin bruised</b>	
Liver, heart, lungs, kidneys and appendix dis- eased.....	74
<b>Skin</b>	
abraded accidentally; infection; blood poison- ing; death .....	178
<b>Skull fractured</b>	
and hemorrhage from ear and nose by fall on floor. Apoplexy .....	108
causing shock and unconsciousness. Skull had been trepanned .....	146
<b>Slid</b>	
into cement block; abdomen bruised; appendi- citis; death. Prior attack of appendicitis....	91

	Page
<b>Slight</b>	
turn of body when diving ruptured ear drum...	250
<b>Slipped</b>	
and fell, injured shoulder and neck and unable to bend them. Lumbago, crick or lame back..	198
and strained groin; rupture; ulcers or abscess; death. Cancer, disease.....	129
in taking tire from auto; strain; blood clot near heart; death. Arterio sclerosis.....	150
on banana peel; fell; injured side causing in- ternal injuries; death. Lead poisoning; lead colic.....	218
on icy ground; twisted body; injured abdomen; adhesions of bowels. Adhesions from prior operation.....	142
on platform, fell and injured leg; septic or pyemic symptoms .....	1
while convalescing from operation; jar detached and dislodged embolus; death.....	250
<b>Smallpox sores</b>	
port of entry for erysipelas germs. Abrasion on foot from wearing new shoes port of entry for germs.....	135
<b>Somnambulism</b>	
Fall from window causing death.....	161
<b>Spinal meningitis</b>	
from germs drawn in ear by inhalation of nasal douche.....	116
<b>Spine</b>	
bruised by fall in bathroom; death. Spine dis- eased.....	223

	Page
<b>Spitting</b>	
of blood and death caused by blows on chest...	196
<b>Splash</b>	
of water infected with gonorrheal germs into eye; inflammation of eye; gonorrhea; loss of sight.....	96
<b>Stepped</b>	
from walk to street; jolt; bowels injured; intus- susception.....	190
<b>Sting of insect</b>	
blood poisoning; death.....	42
venomous poisoning. Poison.....	181
<b>Stomach</b>	
and head injured when thrown to pavement by auto; concussion of brain; appendicitis; heart disease; death .....	16
and kidneys injured in fall while cranking auto; kidney removed; cysts on kidney; death. Kidney diseased .....	189
injured by blows; peritonitis.....	235
injured by fall; hemorrhage from peritoneal cavity. Hemorrhage from cancer.....	126
<b>Stooping</b>	
injured knee by dislocating cartilage.....	203
<b>Strain</b>	
and injury to back by fall from car. Typhoid fever.....	47
and internal injuries from accident cause of death.....	209
and lifting of, and struck by heavy substances,	

	Page
<b>Strain—Continued.</b>	
injured lungs and stomach and ruptured blood vessels.....	183
caused death. Diseased condition of body.....	16
from carrying heavy basket; appendicitis; death. Susceptibility to disease.....	89
from lifting cotton bales, ruptured heart.....	144
from lifting truck cause of hernia.....	160
from lifting; inflammation of intestines; death. Presumption of accident and injury.....	170
from lifting mail sacks; lesion of blood vessels in lungs.....	200
from over-exertion in carrying casket; dilation of heart. Not accidental.....	180
from slipping when taking tire off auto; blood clot near heart; death. Arterio sclerosis.....	151
causing death, accidental.....	122
of abdomen by swinging sledge hammer cause of hernia.....	160
of heart by physical exertion cause of dilation of heart. Heart weak and unhealthy.....	61
or exertion in controlling horse ruptured blood vessel of brain. Hardening of arteries.....	82
or fright from exertion in restraining horse cause of death.....	1
or rupture of side from carrying ashes, caused loop or kink in bowels.....	217
of pulling pump from pipe hole, injured intestines. No accident.....	220
while playing golf, ruptured a cancerous tumor of the liver causing hemorrhage and death...	233
<b>Strained</b>	
and struck with pole; disabled; death. Over-exertion.....	181

	Page
<b>Strained</b> —Continued.	
groin by slipping; ulcers or abscess. Cancer, disease. ....	129
side while bowling; injured abdominal muscles; appendicitis. ....	93
<b>Stricture</b>	
of duodenum, duodenitis, from injury to internal organs, by jumping from platform.....	9
<b>Struck</b>	
another in mouth; hand cut with teeth; blood poisoning; arm amputated.....	64
by auto; thrown to pavement injuring head and stomach; concussion of brain; appendicitis; death. Heart disease.....	16
by bale of hay; back injured; nephritis; death..	208
by boom of sail; leg broken; chloroform given to set leg; death. Arterio sclerosis.....	98
chest against heavy iron in falling; pneumonia. 149	
chest on post in falling; pulmonary hemorrhage; death. ....	112
eye on door hinge; hemorrhage; blindness.....	86
eye; inflammation which spread to other eye; loss of both eyes.....	87
iron handle on wagon in falling; duodenum or pancreas injured; death.....	105
knee; swelling and effusion of water and serum; surgical operation; blood poisoning; death....	109
water spout and injured head in falling. Heart disease. ....	41
with bed pan; wound; infection; blood poison- ing; death. Blood poisoning in bed sores....	199
with pole, or strain in avoiding being struck caused injury. Over-exertion.....	181

	Page
<b>Stubbed toe</b>	
broke bone; gangrene over foot and leg; leg amputated; death. Diabetes concurring.....	115
<b>Stumbled</b>	
and fell against rails; injured side; death.	
Lungs weak .....	43
and fell on sidewalk. Conflicting proof whether disease or accident.....	208
<b>Sudden</b>	
enlargement of hernia. No proof of injury....	219
faintness, temporary disorder, cause of fall.	
Fits, etc. ....	46
insane impulse; suicide. Insanity; infirmity...	105
<b>Suicide</b>	
by hanging when insane. Bodily infirmities, etc.	173
due to sudden insane impulse. Permanent insanity, etc. ....	105
while insane. Bodily infirmity; suicide.....	244
while suffering from insanity caused by fall six weeks prior. Too remote.....	180
while suffering pain from tetanus or lockjaw caused by shooting self in foot.....	157
<b>Sunstroke</b> .....	27, 28
is accident .....	1
is accident .....	30
is accident .....	30
is accident .....	32
is accidental. Pneumonia cause of death not due to sunstroke.....	28
and heat stroke are synonymous terms.....	31
is disease .....	25
from exposure to sun and heat of engine.....	27

	Page
<b>Sunstroke—Continued.</b>	
from exposure to sun and humid atmosphere.....	25
or exposure to heat of furnace.....	31
or heat prostration, is disease.....	24
<b>Surgical operation</b>	
appendix removed; traumatic peritonitis result of injury to abdomen.....	134
for appendicitis caused by bruise of abdomen.	
Prior attack of appendicitis.....	91
for appendicitis; chloroform administered; death. Blood poisoning or septic poisoning..	51
for appendicitis caused by fall injuring side; peritonitis; death .....	124
for appendicitis; septicaemia; death. Not acci- dental .....	71
for appendicitis; septic peritonitis; locked bowels, from injury to abdomen in fall against dashboard. Prior attacks of appendicitis....	5
for appendicitis; vomiting burst stitches; sec- ond operation, etc.; death.....	119
for appendicitis caused by strain by carrying heavy basket. Prior attack of, and suscepti- bility to appendicitis.....	89
for hernia causing peritonitis due to accident...	24
for hernia; hernia cause of death.....	245
for hernia, needle punctured epigastric artery; blood clot; gangrene in leg; leg amputated, due to accident causing hernia.....	234
to reduce rupture caused by fall; death. Pre- disposition to rupture.....	133
for adhesions of bowels caused by slipping on icy ground .....	142
for appendicitis caused by injury in swinging against moving car .....	187
for appendicitis; hernia; operation for hernia; fall; hernia; peritonitis.....	224

	Page
<b>Susceptibility</b>	
to appendicitis by conditions from prior attack..	89
<b>Swallowed</b>	
fishbone which lodged in rectum; blood poison- ing; death .....	167
hard substance; intestinal canal wounded; death	175
<b>Swinging</b>	
sledge hammer; strained abdomen; hernia.....	160
<b>Swung</b>	
against moving train; appendicitis; surgical operation; death. Not immediate disability..	187
<b>Syphilis</b>	
arterio sclerosis; dilation of heart. Blow on chest; aneurism of the aorta; death.....	141
<b>Teeth</b>	
extracted; artery ruptured; infected cotton used; blood poisoning.....	204
<b>Temple</b>	
and spine injured by fall; pneumonia and paralysis. ....	140
injured causing hemorrhage and insanity.....	77
<b>Temporary</b>	
disorder, sudden faintness, cause of fall. Fits, etc. ....	46
illness, fainting caused by indigestion, or dizz- ness. Fall in stream cause of drowning.....	35
physical disorder, fits and vertigo, cause of fall.	46
sickness and fall from train cause of death.....	55

	Page
<b>Tetanus</b>	
or lockjaw from injury to foot, and pain thereof caused insured to-cut his throat. Suicide....	157
<b>Thrown</b>	
against side of car; back and kidneys injured; Bright's disease .....	185
down by team; apoplexy caused by blow. Apo- plexy cause of fall.....	51
<b>Thumb</b>	
injured and virus from it infected finger causing blood poisoning .....	34
bitten by dog; infection; blood poisoning.....	76
<b>Tibia</b>	
fractured when leg was struck with hard sub- stance. Disease or weakness of bone.....	209
<b>Toe</b>	
cut when trimming nail; infection; senile gan- grene in leg; leg amputated; death. Disease; no proof of accident.....	205
injured by stubbing against chair; bone broken; gangrene over foot and leg; leg amputated; death. Diabetes concurring .....	115
injured by wearing new shoe; blood poisoning; death.....	163
rubbed; abrasion; infection; diabetic gangrene..	240
<b>Toes</b>	
amputated; leg amputated for gangrene caused by burning feet in hot air bath. Diabetes...	69
<b>Tooth</b>	
extracted; gum injured; infected by bacteria; blood poisoning .....	234
(See " Teeth.")	

	Page
<b>Traumatic</b>	
appendicitis from injury to abdomen; septic peritonitis.....	212
diabetes caused by accidental injury, cause of death.....	193
neuritis after injury from operating lawn mower.....	75
peritonitis from blow on abdomen when auto overturned.....	134
pneumonia. No evidence of accident.....	7
pneumonia or cerebral hemorrhage from fall injuring head and shoulder, cause of death....	71
<b>Trimming</b>	
corn, cut foot; blood poisoning; death.....	165
nail, cut toe; senile gangrene; leg amputated; death. No proof of accident injury; disease..	205
<b>Tubercular</b>	
abscess. Hip injured on train; abscess; fistulous tract.....	113
lesions healed, and accident caused trouble to flare up .....	143
<b>Tuberculosis</b>	
Unsound food eaten; ptomaine poisoning; death	191
<b>Tumor on brain</b>	
Fall on sidewalk; shock; cerebral hemorrhage..	15
<b>Twisted</b>	
body in slipping on icy ground; abdomen injured; surgical operation; adhesions of bowels. Adhesions from prior operation.....	142
<b>Typhoid fever</b>	
Accident or disease.....	168
Injuries received when assaulted with sticks were cause of death.....	214

	Page
<b>Typhoid fever—Continued.</b>	
Delirium from; fell or jumped from window; unconscious; death .....	110
after recovery from accidental injury.....	63
Fall and bruised side causing fever.....	33
Strain and injury to back by fall in car.....	47
<b>Unconscious</b>	
after falling out of window while in typhoid fever delirium; death.....	110
after fall; cerebral hemorrhage and traumatic pneumonia.....	71
after blow on head causing two abrasions. Heart disease .....	50
<b>Unconsciousness</b>	
due to shock from fractured skull. Skull previ- ously trepanned .....	146
<b>Unsound</b>	
food eaten; ptomaine poisoning ; death.....	191
oysters eaten; ptomaine poisoning ; death.....	164
<b>Uraemic</b>	
convulsions. Accident cause of death.....	192
poisoning and fall due to apoplexy. Accidental fall ; face and head bruised; death.....	247
<b>Venereal disease</b>	
Accidental injury cause of death.....	227
<b>Venomous poison</b>	
from insect bite. Poison.....	181
<b>Vertigo</b>	
caused fall .....	207
(See Temporary disorder; Fits; Sudden ill- ness, etc.)	

	Page
<b>Virulent</b>	
germs from dental instruments cause of blood poisoning.....	230
<b>Virus</b>	
from injured finger to injured thumb caused blood poisoning .....	34
<b>Vomiting</b>	
and coughing burst stitches in appendicitis operation wound; anaesthetic given, and operation and disease cause of death. Not accidental.....	119
<b>Weakened condition</b>	
and strong blood pressure and raising hand suddenly, ruptured blood vessel; sight destroyed. 128 from accident; pneumococcus germs; pneumonia 242	
<b>Weakened heart</b>	
causing deficient circulation caused by shock of fall.....	48
<b>Witnessing fire</b>	
shock; ruptured blood vessel; apoplexy.....	116
<b>Wound</b>	
accidentally received; infection; blood poisoning 246	
<b>Wrench</b>	
or blow to side of abdomen caused pancreatitis. 106 of body and rupture of blood vessel caused by lifting heavy cylinder, causing death.....	150
<b>Wrist</b>	
and head injured by fall on ice; blood clot on brain; cerebral apoplexy; death. Degeneration of nerve and brain cells.....	210









